

# Lower House of the States General

1998-1999

## 26 732 Complete revision of the Aliens Act (Aliens Act 2000)

### No. 1 ROYAL MESSAGE

To the Lower House of the States General

We hereby present to you for your consideration a Bill containing a complete revision of the Aliens Act (Aliens Act 2000).

The explanatory notes accompanying the Bill set out the grounds on which it is based.

And We hereby commend you to God's holy protection.

The Hague, 16 September 1999 Beatrix

### No. 2 BILL

We, Beatrix, by the grace of God Queen of the Netherlands, Princess of Orange-Nassau, etc., etc., etc.

To all who shall see these presents or hear them read, greetings, and be it known that:

We have considered it desirable to review the existing legislation on the admission and expulsion of aliens, the supervision of aliens who reside in the Netherlands, and border control and to adopt a new Aliens Act for this purpose; Now therefore, We, having received advice from the Council of State and in joint consultation with the States General, have thought fit and decreed as We think fit and decree hereby:

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## CHAPTER 1. INTRODUCTORY PROVISIONS

### Section 1

In this Act and the provisions based upon it the following expressions shall have the following meanings:

- (a) border control officers: the officers referred to in section 44;
- (b) aliens supervision officers: the officers referred to in section 45;
- (c) asylum: the residence of an alien in the Netherlands on the grounds referred to in sections 27 and 32;
- (d) external borders: the sea borders of the Netherlands and airports or sea ports where persons are subject to border controls;
- (e) Community citizens:
  - (1) nationals of the Member States of the European Union who are entitled to enter and reside in another Member State under the Treaty establishing the European Community;
  - (2) members of the families of the persons referred to at 1 who have the nationality of a third state and who are entitled to enter and reside in a Member State under an order applying the Treaty establishing the European Community;
  - (3) nationals of a state which is a party to the Treaty establishing the European Economic Area of 2 May 1992, who enjoy rights equal to those of the citizens of the Member States of the European Union as regards entry into and residence in a Member State;
  - (4) members of the families of the persons referred to at 3 who have the nationality of a third state and who are entitled to enter and reside in a Member State under the above-mentioned Treaty establishing the European Economic Area;
- (f) repeat application: an application which may be rejected on the basis of section 4:6, subsection 2, of the General Administrative Law Act;
- (g) chief of police: the head of the police force referred to in section 24 of the Police Act 1993;
- (h) authorisation for temporary stay: a visa issued by a Netherlands

diplomatic or consular mission in the country of origin or in the country of ordinary residence or by the Office of the Governor of the Netherlands Antilles or by the Office of the Governor of Aruba in those countries, with the prior authorisation of Our Minister for Foreign Affairs, for a stay of longer than three months;

(i) Our Minister: the Minister of Justice;

(j) residence on ordinary grounds: the residence of an alien in the Netherlands on the grounds of this Act other than on the grounds referred to in sections 27 and 32;

(k) the Convention on Refugees: the 1951 Geneva Convention relating to the Status of Refugees (Trb. 1954, 88) as amended by the New York Protocol of 1967 (Trb. 1967, 76);

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(l) refugee under the terms of the Convention: an alien who is a refugee within the meaning of the Convention on Refugees and to whom its provisions are applicable;

(m) alien: any person who does not have Netherlands nationality and who is not treated as a Netherlands national by virtue of any provision of law.

## **Section 2**

1. There shall be an Advisory Committee on Aliens Affairs.

2. The Committee shall consist of at least seven members. Officials who are employed at a government ministry or an institution, service or business coming under a government ministry, or who otherwise perform work in a capacity subordinate to Our Ministers shall not be appointed as a member. Notwithstanding the Advisory Bodies Framework Act, the Committee may consist of more than fourteen members, in addition to the chairperson.

3. The chairperson shall be preferably a member of the judiciary.

4. The function of the Committee is:

(a) to advise Our Minister on aliens law and policy in respect of it;

(b) at the request of Our Minister to advise on decisions designated by or pursuant to Order in Council on the basis of this Act;

5. Rules governing the structure and procedures of the Committee shall be drawn up by Order in Council.

6. The Committee is authorised to obtain from any person such information, either orally or in writing, as it deems necessary for the performance of its duties.

## **CHAPTER 2. ENTRY**

### **Section 3**

1. Entry into the Netherlands shall be refused to an alien who:

(a) is not in possession of a valid travel document or is in possession of a valid travel document in which the requisite visa is missing;

(b) constitutes a serious threat to public policy (*ordre public*) or national security;

(c) does not have sufficient means to defray both the costs of his stay in the Netherlands and the costs of his journey to a place outside the Netherlands where his entry is guaranteed, or

(d) does not fulfil the conditions laid down by or pursuant to Order in Council.

2. Rules concerning the requirements for possession of a travel document shall be laid down by or pursuant to Order in Council.

3. The border control officers shall not, save in accordance with a special direction issued by Our Minister, refuse entry into the Netherlands to an alien indicating that he wishes to have asylum.

### **Section 4**

1. A carrier through whose intermediary an alien has been brought to an external border or into the territory of the Netherlands shall take the necessary measures and exercise such supervision as may reasonably be expected of it

to prevent a situation in which the alien does not comply with section 3, subsection 1 (a).

2. A carrier may be required to take a copy of the travel document relating to the alien and to hand this to the border control officers.

3. Rules concerning the application of subsections 1 and 2 may be laid down by or pursuant to Order in Council.

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4. Subsections 1 and 2 shall also apply to every carrier that is guilty of violating outside the Netherlands the obligations referred to in these subsections.

#### **Section 5**

1. An alien who has been refused entry into the Netherlands shall leave the Netherlands immediately, duly observing such directions as may have been given to him for this purpose by a border control officer.

2. If the alien referred to in subsection 1 has entered the Netherlands on board a vessel or aircraft operated by a carrier, he should leave the Netherlands immediately by this means of transport or a means of transport designated by a border control officer.

3. The obligations referred to in subsections 1 and 2 shall not apply if the alien submits an application for the issue of a residence permit.

#### **Section 6**

1. An alien who has been refused entry into the Netherlands may be required to stay in a space or place designated by a border control officer.

2. A space or place as referred to in subsection 1 may be secured against unauthorised departure.

3. Rules relating to the regime applicable to the secure space or place referred to in subsection 1, including the requisite administrative measures, may be laid down by Order in Council.

4. An Order in Council adopted pursuant to subsection 3 shall be laid before both Houses of the States General. It shall enter into effect on a date to be fixed by royal decree, being more than four weeks after it is laid before the States General, unless at least a fifth of the constitutional number of members of one of the Houses expresses a wish within such period that the subject be regulated by statute. In such a case a Bill to this effect shall be introduced as soon as possible. If the Bill is withdrawn or is defeated in either of the two Houses of the States General, the Order in Council shall be withdrawn.

#### **Section 7**

If an alien to whom entry to the Netherlands has been refused has been deprived of his liberty on the grounds of any statutory provision or of a resolution of an international organisation that is binding on the Netherlands, entry shall continue to be refused.

### **CHAPTER 3. RESIDENCE**

#### **PART 1. LAWFUL RESIDENCE**

#### **Section 8**

An alien is lawfully resident in the Netherlands only:

(a) on the ground of a residence permit for a fixed period as referred to in section 13;

(b) on the ground of a residence permit for an indefinite period as referred to in section 18;

(c) on the ground of a residence permit for a fixed period as referred to in section 26;

(d) on the ground of a residence permit for an indefinite period as referred to in section 31;

(e) as a Community citizen as long as this citizen is resident on the grounds of an arrangement under the Treaty establishing the European Community or the Treaty establishing the European Economic Area;

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- (f) pending a decision on an application for the issue of a residence permit in circumstances where, by virtue of this Act or on the ground of a judicial decision, expulsion of the applicant should not take place until the decision on the application has been given;
- (g) pending a decision on an application for renewal or alteration of a residence permit in circumstances where, by virtue of this Act or on the ground of a judicial decision, expulsion of the applicant should not take place until the decision on the application has been given;
- (h) pending a decision on a notice of objection, review or appeal, in circumstances where, by virtue of this Act or on the grounds of a judicial decision, expulsion of the applicant should not take place until the decision on the notice of objection or notice of appeal has been given;
- (i) during the 'free period' referred to in section 12, as long as the residence of the alien is permitted by or pursuant to section 12;
- (j) if there are obstacles to the expulsion as referred to in section 62;
- (k) pending a decision of the court in proceedings on the grounds of section 17 of the Kingdom Act on Netherlands Nationality in circumstances where expulsion does not take place;
- (l) during the period in which an alien is given the opportunity by Our Minister to lay an information about an act constituting an offence under article 250a of the Criminal Code;
- (m) if the alien has a right of residence pursuant to Association Decision 1/80 of the EEC/Turkey Association Council.

#### **Section 9**

1. Our Minister shall supply an alien who is lawfully resident on the grounds of section 8 (a) to (h) and (j) to (m) with a document or written statement evidencing the lawful residence. Our Minister shall, on request, supply such a document or written statement to an alien who is lawfully resident on the ground of section 8 (i).
2. When applying for a decision other than on the ground of this Act, an alien shall, on request, hand over a copy of the document or written statement which is designated as a document within the meaning of section 4:3, subsection 2, of the General Administrative Law Act.
3. Our Minister shall designate by ministerial regulation the documents referred to in subsection 1 and may prescribe models for the documents and the written statement.

#### **Section 10**

1. An alien who is not lawfully resident may not claim entitlement to benefits in kind, facilities and social security benefits issued by decision of an administrative authority. The previous sentence shall apply *mutatis mutandis* to exemptions or licences designated in an Act of Parliament or Order in Council.
2. The first subsection may be derogated from if the entitlement relates to education, the provision of care that is medically necessary, the prevention of situations that would jeopardise public health or the provision of legal assistance to the alien.
3. The granting of entitlement does not confer a right to lawful residence.

#### **Section 11**

1. The entitlements of an alien who is lawfully resident are in accordance with the nature of the residence. Unless provided otherwise in or pursuant to the statutory provision on which the entitlement is based, subsection 2 shall apply in this connection.

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2. An alien as referred to in subsection 1 may claim entitlement to facilities, benefits in kind and social security benefits if he:
  - (a) is lawfully resident as referred to in section 8 (a) to (e) and (m);
  - (b) is lawfully resident as referred to in section 8 (f), (g) and (h), and entitlement is granted by or pursuant to the Act on the Central Reception

Organisation for Asylum-Seekers or by or pursuant to another statutory provision in which the entitlement of such aliens is regulated;  
(c) is lawfully resident as referred to in section 8 (i) to (l),  
for the entitlement expressly granted to these aliens.

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3. Subsections 1 and 2 shall apply *mutatis mutandis* to exemptions or licences designated in an Act of Parliament or Order in Council.

#### **Section 12**

1. An alien who, upon entry, has fulfilled the obligations to which a person is subject when crossing the border is entitled to remain in the Netherlands for a period to be specified by Order in Council, provided that he:

- (a) observes the rules laid down by or pursuant to this Act;
- (b) has sufficient means at his disposal to defray both the costs of his stay in the Netherlands and the costs of his journey to a place outside the Netherlands where his entry is guaranteed;
- (c) does not perform work for an employer contrary to the Foreign National (Employment) Act;
- (d) does not constitute a threat to public policy (*ordre public*) or national security.

2. The period referred to in subsection 1 shall be fixed at not more than six months. Different periods may be laid down for separate categories of aliens specified by Order in Council.

### **PART 2. ORDINARY RESIDENCE PERMITS**

#### *Unit 1. Residence permits for a fixed period*

#### **Section 13**

1. Our Minister is authorised:

- (a) to grant, reject or not process an application for the issue of a residence permit for a fixed period;
- (b) to grant, reject or not process an application for renewal of such a permit;
- (c) to alter a residence permit for a fixed period either at the request of the holder of the permit or *ex officio* on account of changed circumstances;
- (d) to cancel a residence permit for a fixed period;
- (e) to issue *ex officio* a resident permit for a fixed period.

2. A residence permit for a fixed period is issued subject to restrictions connected with the purpose for which leave to reside is granted. Regulations may be attached to the permit.

3. A residence permit for a fixed period is issued for a maximum of five consecutive years. Rules relating to the period of validity of the residence permit and to renewal of the permit shall be laid down by Order in Council.

#### **Section 14**

1. An application for the issue of a residence permit for a fixed period as referred to in section 13 may be rejected if:

- (a) the alien does not possess a valid authorisation for temporary stay or does not possess a valid authorisation for temporary stay which corresponds to the purpose of the residence for which application has been made for a residence permit;
- (b) the alien does not possess a valid travel document;
- (c) the alien does not have independent, lasting and sufficient means of subsistence or the person with whom the alien wishes to reside does not have independent, lasting and sufficient means of subsistence;
- (d) the alien constitutes a threat to public policy or national security;
- (e) the alien is not prepared to submit to a medical examination performed in the interests of public health in order to check for the presence of a disease

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designated by or pursuant to the Infectious Diseases Act or to undergo medical treatment for such a sickness;

(f) the alien performs work for an employer in breach of the Foreign National (Employment) Act;

(g) this is necessary in the public interest, other than on the grounds referred to at (a) to (f).

2. Rules concerning the application of the grounds referred to in subsection 1 (b) and (c) may be made by or pursuant to Order in Council.

#### **Section 15**

1. An application for the issue of a residence permit for a fixed period as referred to in section 13 may not be rejected on account of the absence of a valid authorisation for temporary stay if it concerns:

(a) an alien who has the nationality of one of the countries designated by Our Minister for Foreign Affairs;

(b) a Community citizen, in so far as he is not already exempted on the ground of a designation as referred to under (a);

(c) an alien to whom the provision of care in the Netherlands is medically necessary;

(d) an alien who is the victim of the crime of trafficking in women or is a witness/informant in respect thereof;

(e) an alien who was in possession, immediately before the application, of a residence permit for a fixed period as referred to in section 26 or a residence permit for an indefinite period as referred to in section 31;

(f) an alien who has submitted an application for alteration of a residence permit in good time;

(g) an alien who belongs to a category designated by Order in Council.

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2. The proposal for an Order in Council to be adopted pursuant to subsection 1 (g) shall not be made until after a draft has been published in the Government Gazette and every person has been given the opportunity to bring wishes and objections to the attention of Our Minister within four weeks of the day of the publication. The draft shall be laid before the two Houses of the States General at the same time as the publication.

#### **Section 16**

1. An application for renewal of a residence permit for a fixed period as referred to in section 13 may be rejected if:

(a) the holder has established his principal place of residence outside the Netherlands;

(b) the alien does not have a valid travel document;

(c) the alien has supplied incorrect information or has withheld information in circumstances where such information would have led to the rejection of the original application to issue or renew the permit;

(d) the alien no longer has independent, lasting and sufficient means of subsistence or the person with whom the alien resides no longer has independent, lasting and sufficient means of subsistence;

(e) the alien constitutes a threat to public policy or national security;

(f) a restriction subject to which the permit has been issued or a regulation governing the permit is no longer complied with;

(g) the alien is performing work for an employer in breach of the provisions of the Foreign National (Employment) Act;

(h) this is necessary in the public interest, other than on the grounds referred to at (a) to (g).

2. Rules concerning the application of the grounds referred to in subsection 1 (b) and (d) may be laid down by or pursuant to Order in Council.

#### **Section 17**

A residence permit for a fixed period may be cancelled on the grounds referred to in section 16, subsection 1, with the exception of (b).

*Unit 2. Residence permits for an indefinite period*

#### **Section 18**

1. Our Minister is authorised:

(a) to grant, reject or not process an application for the issue of a residence permit for an indefinite period;

(b) to cancel a residence permit for an indefinite period.

2. A residence permit for an indefinite period is not issued subject to restrictions. No regulations governing the permit may be laid down.

#### **Section 19**

1. An application for the issue of a residence permit for an indefinite period as referred to in section 18, which is made by an alien who has been lawfully resident in the Netherlands for a period of five consecutive years on the grounds of section 8 (a), (c), (e) or (m), may be rejected only if:

(a) the alien does not have lasting and sufficient means of subsistence;

(b) the alien has been convicted by final judgment of a court for an indictable offence that carries a term of imprisonment of three or more years or has been given a non-punitive order within the meaning of article 37a of the Criminal Code for such an offence;

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(c) the alien has established his principal place of residence outside the Netherlands;

(d) the alien constitutes a threat to national security;

(e) this is necessary in the public interest, other than for the reasons referred to at (a) to (d).

2. If the alien referred to in subsection 1 has been lawfully resident in the Netherlands for a continuous period of ten years, the application shall not be rejected on the ground referred in subsection 1 (a).

3. A period as referred to in subsections 1 and 2 of this section shall be deemed to mean a period immediately preceding the day on which application is made for the residence permit for an indefinite period. Residence in the Netherlands before the applicant reaches the age of eight years shall be disregarded for the purpose of calculating the period of lawful residence.

#### **Section 20**

A residence permit for an indefinite period as referred to in section 18 may be cancelled if:

(a) the holder thereof has established his principal place of residence outside the Netherlands;

(b) the alien has supplied incorrect information or has withheld information in circumstances where such information would have led to the rejection of the original application to issue, alter or renew the permit;

(c) the holder thereof has been convicted by final judgment of a court for an indictable offence that carries a term of imprisonment of three or more years or has been given a non-punitive order within the meaning of article 37a of the Criminal Code for such an offence;

(d) the alien constitutes a threat to national security;

(e) this is necessary in the public interest, other than for the reasons referred to at (a) to (d).

*Unit 3. Procedural provisions*

#### **Section 21**

An application for the issue of:

(a) a residence permit for a fixed period as referred to in section 13 or for the renewal or alteration thereof, or

(b) a residence permit for an indefinite period as referred to in section 18, shall, notwithstanding section 2:1, subsection 1, of the General Administrative Law Act, be submitted by the alien or his statutory representative.

#### **Section 22**

1. Rules shall be laid down by or pursuant to Order in Council concerning:

(a) the manner in which an application is submitted and processed;

(b) the information which the alien must furnish in person;  
(c) the way in which decisions taken in respect of the alien by or pursuant to this Act and the notifications, notices or reports prescribed by or pursuant to this Act are to be communicated to the alien or another interested party. It may be provided in this connection that decisions may also be communicated by the forwarding or handing over of a document and by the making of entries in a document designated for this purpose.

2. An alien may be charged a fee of not more than 500 guilders for the processing of an application in such cases as Our Minister may determine and in accordance with rules prescribed by Our Minister. Our Minister may also provide in this connection that an alien will be charged a fee for the issue of a

11 document evidencing lawful residence. If payment is not made, the application shall not be processed or, as the case may be, the document not issued.

#### *Unit 4. Decision on an application*

##### **Section 23**

1. A decision shall be given within six months on an application for:

- (a) the issue of a residence permit for a fixed period as referred to in section 13;
- (b) the renewal of such a residence permit;
- (c) the alteration of a residence permit for a fixed period as referred to in section 13;
- (d) the issue of a residence permit for an indefinite period as referred to in section 18.

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2. The time limit for giving a decision as referred to in subsection 1 may be extended for not more than six months if advice or screening by third parties or the Public Prosecution Service is necessary, in the opinion of the Minister, in order to assess the application.

3. Our Minister shall inform the alien of the extension.

#### *Unit 5. Granting of an application*

##### **Section 24**

1. A residence permit, which by operation of law entails lawful residence, shall be issued with effect from the day on which the alien demonstrates that he fulfils all conditions, but no earlier than with effect from the day on which the application was received.

2. A residence permit for a fixed period as referred to in section 13 shall be renewed with effect from the day on which the alien demonstrates that he fulfils all conditions, but no earlier than with effect from the day after that on which the permit ceased to be valid.

#### *Unit 6. Rejection of an application*

##### **Section 25**

1. The consequences of a decision rejecting an application for the issue of residence permit for a fixed period as referred to in section 13 or a residence permit for an indefinite period as referred to in section 18 shall, by operation of law, be that:

- (a) the alien is no longer lawfully resident, unless another legal ground for lawful residence exists;
- (b) the alien should leave the Netherlands of his own volition within the time limit prescribed in section 60, failing which the alien may be expelled, and
- (c) the aliens supervision officers are authorised, after the expiry of the time limit within which the alien must leave the Netherlands of his own volition, to enter every place, including a dwelling, without the consent of the occupant, in order to expel the alien.

2. Subsection 1 shall apply *mutatis mutandis* if:

- (a) it has been decided under section 22 or under section 4:5 of the General Administrative Law Act that the application will not be processed;

- (b) the lawful residence has ended by operation of law;
  - (c) a residence permit has been cancelled or not renewed.
3. The consequences referred to in subsection 1 shall not take effect if the alien has lodged a notice of objection or application for review and the operation of the decision has been suspended.

### **PART 3. ASYLUM RESIDENCE PERMITS**

#### *Unit 1. Residence permits for a fixed period*

#### **Section 26**

1. Our Minister is authorised:
- (a) to grant, reject or not process an application for the issue of a residence permit for a fixed period;
  - (b) to grant, reject or not process an application for renewal of such a permit;
  - (c) to cancel a residence permit for a fixed period.
2. A residence permit for a fixed period is issued for a maximum of three consecutive years. The cases in which a residence permit is granted for less than three consecutive years shall be designated by Order in Council. Rules 13 relating to the period of validity of the residence permit and to renewal of the permit shall be laid down by such Order in Council.

#### **Section 27**

1. A residence permit for a fixed period as referred to in section 26 may be issued to an alien:
- (a) who is a refugee under the terms of the Convention;
  - (b) who makes a plausible case that he has good grounds for believing that if he is expelled he will run a real risk of being subjected to torture or to inhuman or degrading treatment or punishment;
  - (c) who cannot, for pressing reasons of a humanitarian nature connected with the reasons for his departure from the country of origin, reasonably be expected, in the opinion of the Minister, to return to his country of origin;
  - (d) for whom return to the country of origin would, in the opinion of Our Minister, constitute an exceptional hardship in connection with the overall situation there;
  - (e) who belongs, as husband, wife or minor child, to the family of an alien as referred to at (a) to (d), has the same nationality as the alien and has either entered the Netherlands at the same time as the alien or has entered it within three months of the date on which the alien referred to at (a) to (d) was granted a residence permit for a fixed period as referred to in section 26.
2. Indicators that will in any event be included in the assessment of whether there is a situation as referred to in subsection 1 (d) shall be designated by or pursuant to Order in Council.

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#### **Section 28**

- An application for the issue of a residence permit for a fixed period as referred to in section 26 shall be rejected if:
- (a) another country which is party to the Convention on Refugees is responsible for processing the application by virtue of a treaty or a resolution of an international organisation binding on such country and the Netherlands;
  - (b) the alien is already lawfully resident as referred to in section 8, (a) to (e) or (m);
  - (c) the alien has previously submitted an application for the issue of a residence permit on which an irrevocable decision has not yet been taken and, on the grounds of such application, he is lawfully resident as referred to in section 8, (f), (g) and (h), or
  - (d) the alien will be transferred to a country of earlier residence on the grounds of a treaty obligation between the Netherlands and the other country concerned, which is a party to the Convention on Refugees, the Convention for

the Protection of Human Rights and Fundamental Freedoms (Trb. 1951, 154) and the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (Trb. 1985, 69) or has otherwise undertaken to observe article 33 of the Convention on Refugees, article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms and article 3 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

#### **Section 29**

1. An application for the issue of a residence permit for a fixed period as referred to in section 26 shall be rejected if the alien has not made a plausible case that his application is based on circumstances which, either in themselves or in connection with other facts, constitute a legal ground for the issue of the permit.

2. The screening to determine whether an application can be rejected shall take account, among other things, of the fact that:

- (a) the alien has previously submitted an application for a residence permit in the Netherlands under another name;
- (b) the alien has failed to comply with the directions referred to in section 53, without having a valid reason;
- (c) the alien does not have a travel document required for entry into the Netherlands, unless he has immediately reported to a border control officer or an aliens supervision officer, stating the place where or near which he entered the Netherlands, and has indicated to such officer that he wishes to have asylum;
- (d) the alien has produced a false or forged travel document, identity card or other papers and, despite being questioned about this, has deliberately asserted that they are genuine;
- (e) in support of his application the alien has deliberately produced a travel document, identity card or other papers that do not relate to him;
- (f) in support of his application the alien is unable to produce a travel document, identity card or other papers necessary for assessment of his application, unless the alien can make a plausible case that he is not to blame for their absence;
- (g) the alien comes from a safe country of origin designated as such by Our Minister in a policy rule;
- (h) the alien comes from a safe third country designated as such by Our Minister in a policy rule;
- (i) the alien will be admitted to a country of earlier residence until he has found lasting protection elsewhere;
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- (j) the alien constitutes a threat to public policy (*ordre public*) or national security.

3. An application for the issue of a residence permit for a fixed period as referred to in section 26 may be rejected if this is necessary in the public interest for compelling reasons.

#### **Section 30**

A residence permit for a fixed period as referred to in section 26 may be cancelled or an application for its renewal rejected if:

- (a) the alien has supplied incorrect information or has withheld information in circumstances where such information would have led to the rejection of the original application to issue or renew the permit;
- (b) the alien constitutes a threat to public policy (*ordre public*) or national security;
- (c) the ground for the issuing of the permit, as referred to in section 27, has ceased to exist;
- (d) the alien has established his principal place of residence outside the Netherlands;

(e) this is necessary in the public interest for compelling reasons, other than those referred to at (a) to (d).

#### *Unit 2. Residence permits for an indefinite period*

##### **Section 31**

Our Minister is authorised:

(a) to grant, reject or not process an application for the issue of a residence permit for an indefinite period;

(b) to cancel a residence permit for an indefinite period.

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##### **Section 32**

An application for the issue of a residence permit for an indefinite period as referred to in section 31, which is made by an alien who, immediately prior to the application, has been lawfully resident for a period of three consecutive years as referred to in section 8 (c), may be rejected only if a ground as referred to in section 30 exists at the moment when the residence permit for a fixed period as referred to in section 26 ceases to be valid.

##### **Section 33**

A residence permit for an indefinite period as referred to in section 31 may be cancelled if:

(a) the alien has supplied incorrect information or has withheld information in circumstances where such information would have led to the rejection of the application to issue or renew the permit;

(b) the alien has been convicted by final judgment of a court for an indictable offence that carries a term of imprisonment of three or more years or has been given a non-punitive order within the meaning of article 37a of the Criminal Code for such an offence;

(c) the alien has established his principal place of residence outside the Netherlands;

(d) the alien constitutes a threat to national security;

(e) this is necessary in the public interest for compelling reasons, other than those referred to at (a) to (d).

#### *Unit 3. Procedural provisions*

##### **Section 34**

An application for the issue of:

(a) a residence permit for a fixed period as referred to in section 26 or for the renewal thereof, or

(b) a residence permit for an indefinite period as referred to in section 31, shall, notwithstanding section 2:1, subsection 1, of the General Administrative Law Act, be submitted by the alien or his statutory representative.

##### **Section 35**

Rules shall be laid down by or pursuant to Order in Council concerning:

(a) the manner in which an application is submitted and processed;

(b) the manner in which the screening of the application, including the interviewing of the alien, is arranged;

(c) the information which the alien must furnish in person;

(d) the way in which decisions taken in respect of the alien by or pursuant to this Act and the notifications, notices or reports prescribed by or pursuant to this Act are to be communicated to the alien or another interested party. It may be provided in this connection that decisions may also be communicated by the forwarding or handing over of a document and by the making of entries in a document designated for this purpose.

##### **Section 36**

If the alien is given the opportunity to be heard about the application for the issue or renewal of a residence permit, he shall be interviewed in a language which he may reasonably be assumed to understand.

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**Section 37**

1. If Our Minister intends to reject an application for the issue or renewal of a residence permit, the alien shall be given written notice of this and of the reasons.
2. Notwithstanding section 4:9 of the General Administrative Law Act the alien shall state his views in writing within such reasonable time limit as Our Minister may prescribe.
3. Rules governing the time limit referred to in subsection 2 and the application of the previous subsections shall be laid down by the Order in Council referred to in section 35.

**Section 38**

An application for the issue of a residence permit for an indefinite period as referred to in section 31 may not be submitted until four weeks before the residence permit for a fixed period as referred to in section 26 ceases to be valid.

**Section 39**

1. If Our Minister intends to cancel a residence permit for a fixed period as referred to in section 26 or a residence permit for an indefinite period as referred to in section 31, sections 36 and 37 shall apply *mutatis mutandis*.
2. If, after receiving the views of the alien, Our Minister still intends to cancel the residence permit, the alien shall be given the opportunity to be heard.

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*Unit 4. Decision on an application***Section 40**

1. A decision shall be given on an application for the issue of a residence permit for a fixed period as referred to in section 26 or a residence permit for an indefinite period as referred to in section 31 within six months of receipt of the application.
2. Section 3:47 of the General Administrative Law Act shall not apply.
3. The decision on whether to grant the application shall be based in part on the policy pursued in this respect by Our Minister after consultation with Our Minister for Foreign Affairs.
4. If the application is rejected, the decision shall contain a passage dealing with the views of the alien.
5. The time limit for giving a decision as referred to in subsection 1 may be extended for not more than six months if advice or screening by third parties or the Public Prosecution Service is necessary, in the opinion of the Minister, in order to assess the application.
6. Our Minister shall inform the alien of the extension.

**Section 41**

1. Without prejudice to section 40, subsection 5, and to section 4:5 of the General Administrative Law Act, the time limit referred to in section 40, subsection 1, may be extended by order of Our Minister for a maximum of one year for certain categories of alien who have submitted an application for a residence permit for a fixed period as referred to in section 26 if:
  - (a) uncertainty about the situation in the country of origin is expected to exist for a short period and it would therefore not be reasonable to take a decision on whether the application can be granted on one of the grounds referred to in section 27;
  - (b) the situation in the country of origin on the grounds of which the application could be granted under section 27 will be of short duration;
  - (c) the number of applications is so great that Our Minister cannot reasonably be expected to give a decision on them in good time;
2. Rules on how an order as referred to in subsection 1 affects the time limit referred to in section 32 shall be laid down by Order in Council.

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*Unit 5. Granting of an application*

**Section 42**

1. The issue of a residence permit for a fixed period as referred to in section 26, which entails lawful residence, shall have the effect of terminating, by operation of law, the benefits in kind provided for by or pursuant to the Act on the Central Reception Organisation for Asylum-Seekers or by or pursuant to another statutory provision that regulates benefits in kind of this nature. The benefits in kind shall be terminated in the manner provided for by or pursuant to the Act on the Central Reception Organisation for Asylum-Seekers or in the other statutory provision and within the time limit prescribed for this purpose.
2. A residence permit for a fixed period as referred to in section 26 shall be issued with effect from the day on which the alien has demonstrated that he fulfils all conditions, but no earlier than with effect from the day on which the application was received.
3. Notwithstanding subsection 2, a residence permit for a fixed period as referred to in section 26 shall be issued with effect from the date on which the application is granted if an order as referred to in section 41 has been made.
4. A residence permit for an indefinite period as referred to in section 31 shall be granted with effect from the date on which the alien has made a plausible case that he fulfils all conditions, but no earlier than with effect from the day after that on which the residence permit for a fixed period as referred to in section 26 ceases to be valid.

*Unit 6. Rejection of an application*

**Section 43**

1. The consequences of a decision whereby an application for the issue of residence permit for a fixed period as referred to in section 26 or a residence permit for an indefinite period as referred to in section 31 is rejected shall, by operation of law, be that:
  - (a) the alien is no longer lawfully resident, unless another legal ground for lawful residence as referred to in section 8 exists;
  - (b) the alien should leave the Netherlands of his own volition within the time limit prescribed in section 60, failing which the alien may be expelled;
  - (c) the benefits in kind provided for by or pursuant to the Act on the Central Reception Organisation for Asylum-Seekers or another statutory provision that regulates benefits in kind of this nature will terminate in the manner provided for by or pursuant to that Act or statutory provision and within the time limit prescribed for this purpose;
  - (d) the aliens supervision officers are authorised, after the expiry of the time limit within which the alien must leave the Netherlands of his own volition, to enter every place, including a dwelling, without the consent of the occupant, in order to expel the alien;
  - (e) the aliens supervision officers are authorised, after the expiry of the time limit referred to in (c), to compel the vacation of property in order to terminate the accommodation or the stay in the residential premises provided as a benefit in kind as referred to in (c).
2. Subsection 1 shall apply *mutatis mutandis* if:
  - (a) it has been decided under section 4:5 of the General Administrative Law Act that the application will not be processed, or
  - (b) a residence permit has been cancelled or not renewed.
3. The consequences referred to in subsection 1 shall not take effect as long as the application for review lodged by the alien suspends the operation of the decision.

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4. Our Minister may order that, notwithstanding subsection 1, opening words and (c), the benefits in kind provided for by or pursuant to the Act on the Central Reception Organisation for Asylum-Seekers or another statutory provision that regulates benefits in kind of this nature will not terminate for

certain categories of alien. The order shall be repealed no later than one year after its notification.

5. An alien to whom an order as referred in subsection 4 is applicable shall be deemed to be lawfully resident as referred to in section 8 (j).

## **CHAPTER 4. SUPERVISION AND IMPLEMENTATION**

### **PART 1. DESIGNATION AND POWERS OF OFFICIALS**

#### *Unit 1. Designation*

##### **Section 44**

1. The following are charged with supervising the observance of and implementing the statutory provisions relating to border control:
  - (a) the officers of the Royal Netherlands Military Constabulary;
  - (b) the officers of the Rotterdam-Rijnmond regional police force;
  - (c) the director of border accommodation as referred to in article 3 of the Border Accommodation Regime Regulations;
  - (d) the police officers designated by order of Our Minister, in agreement with Our Minister of the Interior and Kingdom Relations and Our Minister of Defence, as referred to in section 3, subsection 1 (a) and (c), and subsection 2 of the Police Act 1993;
2. Rules shall be laid down by Order in Council concerning:
  - (a) the arrangements made in the interests of border control;
  - (b) the obligations to which persons are subject for the purpose of surveillance in the interests of border control.

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##### **Section 45**

1. The following are charged with supervision of the observance of the statutory provisions relating to aliens:
  - (a) the police officers referred to in section 3, subsection 1 (a) and (c), and subsection 2 of the Police Act 1993;
  - (b) the officers of the Royal Netherlands Military Constabulary;
  - (c) officials designated by order of Our Minister.
2. The police officers as referred to in section 3, subsection 1 (a) and (c), and subsection 2 of the Police Act 1993 shall perform their aliens supervision duties under the direction of the chief of police.
3. The supervision of aliens shall be performed by the Royal Netherlands Military Constabulary under the direction of the commander of the Royal Netherlands Military Constabulary.

##### **Section 46**

1. The chief of police and the commander of the Royal Netherlands Military Constabulary shall furnish Our Minister with the information requested by him about the implementation of this Act.
2. Our Minister may issue directions to the chief of police and the commander of the Royal Netherlands Military Constabulary about the implementation of this Act. Our Minister may issue individual directions to the officials referred to in section 45, subsection 1.
3. Our Minister may issue directions about the organisation of the job procedures and mode of operation to:
  - (a) the chief of police, through the intermediary of the administrative controller of the regional police force;
  - (b) the commander of the Royal Netherlands Military Constabulary through the intermediary of the Minister of Defence;
4. Further rules may be laid down by Order in Council regarding paragraphs 1, 2 and 3.

#### *Unit 2. Powers*

##### **Section 47**

Sections 5:12, 5:13 and 5:20 of the General Administrative Law Act shall apply *mutatis mutandis* to the exercise of the powers referred to in this unit.

##### **Section 48**

1. The border control officers and aliens supervision officers are authorised to stop persons in order to check their identity, nationality and residence status either because there is a reasonable suspicion that such persons are illegally resident or in order to prevent illegal residence of persons after they have crossed the border. A person who alleges that he has Netherlands nationality but is unable to prove this may be subjected to coercive measures as referred to in subsections 2 and 5. The documents which an alien must possess in order to establish his identity, nationality and residence status shall be designated by Order in Council.

2. If the identity of a person who has been stopped cannot be immediately established, he may be transferred to a place of interview. He shall not be detained there for longer than six hours, for which purpose, however, the period between midnight and nine o'clock in the morning is not counted.

3. If the identity of a person who has been stopped cannot be immediately established and if it transpires that this person is not lawfully resident in the Netherlands or it is not immediately established that he is

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lawfully resident, he may be transferred to a place of interview. He shall not be detained there for longer than six hours, for which purpose, however, the period between midnight and nine o'clock in the morning is not counted.

4. If there is still a reasonable suspicion that the detained person is not lawfully resident, the period referred to in subsections 2 and 3 may be extended for a maximum of forty-eight hours in the interests of the investigation by the commander of the Royal Netherlands Military Constabulary or, as the case may be, the chief of police in the place where the person is present.

5. The officials referred to in subsection 1 are authorised to search the clothing and body of the detained person and his belongings.

6. Further rules on the application of the above subsections shall be laid down by Order in Council.

#### **Section 49**

1. If the border control officers and aliens supervision officers have a reasonable suspicion that persons with respect to whom they have a supervisory duty are being carried in a means of transport, they are authorised to search the means of transport. In such a case the officers concerned are authorised to instruct the driver of the vehicle or the captain of the vessel to stop the means of transport and take it to a place designated by them in order that the means of transport may be searched.

2. Section 5:19, subsection 5, of the General Administrative Law Act shall apply *mutatis mutandis* to an instruction as referred to in subsection 1.

3. If the border control officers have a reasonable suspicion that persons with respect to whom they have a supervisory duty are being carried on an aircraft, they are authorised to search the aircraft. In such a case the officers concerned are authorised to instruct the captain of the aircraft to take the aircraft to a place designated by them in order that the aircraft may be searched.

#### **Section 50**

1. The border control officers and aliens supervision officers are authorised, in the performance of their duties, to take possession of, temporarily retain and make entries in travel documents and identity cards of persons. Rules on this shall be laid down by or pursuant to Order in Council.

2. The travel document or identity card shall be returned to the alien if he has indicated that he wishes to leave the Netherlands and also does actually leave. In the event of expulsion, the travel document and identity card may be handed to the border control official in the country to which admission is guaranteed.

#### **Section 51**

1. The border control officers and aliens supervision officers are

authorised to enter a dwelling without the consent of the occupant if there is a reasonable suspicion that an alien who is not lawfully resident is staying there.

2. The officers referred to in subsection 1 are also authorised to enter every place, including a dwelling (without the consent of the owner), in so far as this is necessary in order to expel an alien or to remand an alien in custody on the grounds of section 57.

## **PART 2. SUPERVISION MEASURES**

### **Section 52**

1. Aliens may be required by Order in Council:

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- (a) to give notice of any change of address or change in their place of residence in the Netherlands and of their departure to another country;
- (b) to furnish such information as may be of importance in the application of rules prescribed by or pursuant to this Act;
- (c) to assist in the recording of data with a view to identification;
- (d) to submit to a medical examination performed in the interests of public health in order to check for the presence of a disease designated by or pursuant to the Infectious Diseases Act or in the course of assessment of an application for a residence permit;
- (e) to report within a given period of their arrival in the Netherlands;
- (f) to report periodically;
- (g) to hand over the document or written statement referred to in section 9 evidencing the lawful residence.

2. In cases in which Our Minister considers this to be necessary in the interests of public policy (*ordre public*) or national security, he may impose an individual obligation on an alien to report periodically to the chief of police.

### **Section 53**

1. An alien who is lawfully resident on the grounds of section 8 (f) shall keep himself available, in connection with the screening of his application for a residence permit, at a place designated by Our Minister in accordance with the directions given to him by the competent authority for this purpose.

2. In the interests of the screening of an application for the issue of a residence permit as referred to in section 26, the border control officers and aliens supervision officers are authorised to stop an alien and search his clothing or body and to search his luggage with a view to discovering travel documents, identity cards, documents or papers which are necessary for assessment of his application.

3. The border control officers and aliens supervision officers are authorised to search the clothing or body of an alien who is present at a place as referred to in subsection 1 or in a removal centre and to search his luggage in the interests of the security of that place.

## **CHAPTER 5. MEASURES FOR RESTRICTION AND DEPRIVATION OF LIBERTY**

### **Section 54**

1. In accordance with rules issued by Order in Council Our Minister may, in the interests of public policy (*ordre public*) or national security, restrict the freedom of movement of an alien who:

- (a) is not lawfully resident;
- (b) is lawfully resident on the grounds of section 8, with the exception of (b), (d) and (e);

2. If the alien has indicated that he wishes to leave the Netherlands and also has the opportunity to do so, subsection 1 shall not be applied or, if already applied, shall cease to apply as soon as such an indication is given.

### **Section 55**

1. Our Minister may give an alien whose application for a residence permit as referred to in section 26 has been rejected a direction to stay in a given space or at a given place and to observe the directions of the competent

authority there, even if the decision rejecting the application is not yet irrevocable or if the application for review suspends the operation of the decision.

2. Another space or place may be designated at the request of the alien.

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3. A direction as referred to in subsection 1 shall not be given if the freedom of movement of the alien is restricted in connection with the screening of his application for a residence permit and the alien has actually kept himself available and the decision to reject the application was given more than four weeks after the submission of the application.

4. A direction as referred to in subsection 1 shall lapse if the decision in which the application was rejected has been quashed or as soon as the departure of the alien for the space or place is necessary in order to leave the Netherlands.

5. The time limit referred to in subsection 3 shall be suspended during any period in which the alien has not complied with the restriction on his freedom of movement.

#### **Section 56**

1. In the case referred to in section 55, subsection 1, Our Minister may, if this is necessary for the purpose of expulsion, designate for the alien a space or place which is secured against unauthorised departure.

2. Section 6, subsection 3, section 55, subsections 2-5, and section 57, subsection 3, shall apply *mutatis mutandis*.

#### **Section 57**

1. If necessary in the interests of public policy (*ordre public*) or national security, Our Minister may, with a view to expulsion, order the remand in custody of an alien who:

(a) is not lawfully resident;

(b) is lawfully resident on the grounds of section 8 (f) and (g).

2. If the papers necessary for the return of the alien are available or will shortly become available, it is deemed to be in the interests of public policy (*ordre public*) that the alien be remanded in custody.

3. An alien shall not be remanded in custody or the remand shall be ended as soon as the alien has indicated that he wishes to leave the Netherlands and also has the opportunity to do so.

4. Remand in custody pursuant to subsection 1 (b) or subsection 2 shall in any event last for no longer than four weeks.

#### **Section 58**

Further rules about the application of this chapter may be laid down by Order in Council. Provision may be made in this connection for the possibility of recovering the costs of remand in custody from the alien himself or, if he is a minor, from the persons who have statutory authority over him.

### **CHAPTER 6. DEPARTURE, EXPULSION AND ORDERS DECLARING A PERSON TO BE AN UNDESIRABLE ALIEN**

#### **PART 1. DEPARTURE**

##### **Section 59**

1. An alien who is not or is no longer lawfully resident should leave the Netherlands of his own volition within the time limit prescribed in section 60.

2. If the operation of the decision rejecting an application or cancelling a residence permit is suspended, the alien may be required to cooperate in the preparations for his departure from the Netherlands.

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3. The submission of a complaint as referred to in section 9:1 of the General Administrative Law Act shall not suspend the obligation referred to in subsection 1.

##### **Section 60**

1. After the lawful residence of an alien has ended, he should leave the

Netherlands of his own volition within four weeks.

2. Notwithstanding subsection 1, an alien should leave the Netherlands immediately if the review period referred to in section 67 elapses without being used and during this period the operation of the decision under which the application is rejected or the residence permit is cancelled or not renewed is suspended.

3. Notwithstanding subsection 1, an alien:

(a) whose lawful residence has ended on the grounds of section 8 (i), or

(b) who was not lawfully resident immediately prior to his arrival in the Netherlands,

shall immediately leave the Netherlands.

4. Our Minister may, notwithstanding subsection 1, shorten the departure period to less than four weeks:

(a) in the interests of the expulsion;

(b) in the interests of public policy (*ordre public*) or national security.

## **PART 2. EXPULSION**

### **Section 61**

1. An alien who is not lawfully resident and who has not left the Netherlands of his own volition within the time limit prescribed by law may be expelled pursuant to section 25, subsection 1 (b), or section 43, subsection 1 (b).

2. Our Minister is authorised to make an expulsion order.

3. If the operation of the decision rejecting the application or cancelling the residence permit is suspended, the alien may be required to cooperate in the preparations for the expulsion.

### **Section 62**

An alien shall not be expelled as long as his health or that of any of the members of his family would make it inadvisable for him to travel.

### **Section 63**

1. An alien:

(a) who has entered the Netherlands on board a vessel or aircraft operated by a carrier and who is required to leave the Netherlands immediately, or

(b) who has been detained with a view to his expulsion within six months of his arrival on board a vessel or aircraft operated by a carrier, may be expelled by being put on board a vessel or aircraft operated by the same carrier.

2. If so directed by a border control officer, the carrier shall, without charge, carry the alien referred to in subsection 1 back to a place outside the Netherlands. If this is not possible within a reasonable period or, in the case referred to in subsection 1 (b), is not possible within a reasonable period after the detention, the costs of expulsion from the Netherlands may be recovered against that carrier.

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3. Captains of vessels and aircraft shall cooperate with the border control officer in carrying out the expulsion to such extent as may reasonably be required of them,

4. Subsection 1 (b) shall not apply to an alien who is lawfully resident until a date later than the departure of the vessel or aircraft on board of which he arrived in the Netherlands.

### **Section 64**

Rules concerning the application of parts 1 and 2 of this chapter may be laid down by Order in Council. Provision may be made in this connection for the possibility of recovering the costs of expulsion from the alien himself or, if he is a minor, from the persons who have statutory authority over him.

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## **PART 3. ORDERS DECLARING A PERSON TO BE AN UNDESIRABLE**

## **ALIEN**

### **Section 65**

1. An alien may be declared by Our Minister to be an undesirable alien:
  - (a) if he is not lawfully resident in the Netherlands and has repeatedly committed an act that constitutes an offence under this Act;
  - (b) if he has been convicted by final judgment of a court for an indictable offence that carries a term of imprisonment of three or more years or has been given a non-punitive order within the meaning of article 37a of the Criminal Code for such an offence;
  - (c) if he is resident in the Netherlands other than on the grounds of section 8, (a) to (e) or (m), and he constitutes a threat to public policy (*ordre public*) or national security;
  - (d) pursuant to a treaty, or
  - (e) in the interests of the international relations of the Netherlands.
2. If the decision in which the alien is declared to be an undesirable alien is to be communicated by post, notice of the decision shall be given in the Government Gazette.
3. Notwithstanding section 8, a person who has been declared an undesirable alien may not be lawfully resident.

### **Section 66**

1. Our Minister may, at the request of an alien, decide to cancel an order declaring him to be an undesirable alien.
2. The order declaring a person to be an undesirable alien shall be cancelled if the alien has resided outside the Netherlands for a continuous period of ten years and none of the grounds referred to in section 65, subsection 1, has occurred during this period.
3. Rules on the application of the previous subsections may be laid down by or pursuant to Order in Council.

## **CHAPTER 7. MEANS OF REDRESS**

### **PART 1. GENERAL PROVISIONS**

#### **Section 67**

1. Notwithstanding section 6:7 of the General Administrative Law Act the time limit for lodging a notice of objection or application for review shall be four weeks.
2. Notwithstanding subsection 1, the time limit for an application for review shall be one week if the application for the granting of a residence permit for a fixed period as referred to in section 26 has been rejected within a number of hours designated by Order in Council.
3. Notwithstanding section 6:7 of the General Administrative Law Act the lodging of an application for review of an order as referred to in section 91 shall not be subject to any time limit.

#### **Section 68**

1. Notwithstanding section 2:1 of the General Administrative Law Act a notice of objection, application for administrative review, application for judicial review or appeal may be lodged by the alien in person, his statutory representative, his special attorney or an attorney-at-law if he declares that he has been expressly authorised for this purpose.

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2. If the alien has been deprived of his liberty he may also lodge the notice of objection, application for administrative, application for judicial review or appeal by means of a written statement as referred to in article 451a of the Code of Criminal Procedure.

#### **Section 69**

1. Notwithstanding section 8:7 of the General Administrative Law Act the District Court of The Hague shall be competent to hear applications for judicial review of decisions given on the basis of this Act.
2. In the case of applications for judicial review of decisions given under

this Act the District Court of The Hague may hold court hearings in alternative places of session. It may be provided by Order in Council that, in accordance with rules to be prescribed in the Order in Council, court hearings may be held outside the principal seat of the district or outside the district.

3. The president of the District Court of The Hague shall decide what cases will be dealt with at the court hearings held in alternative places of session.

4. The District Court of The Hague may perform all activities in the alternative places of session, even other than at the court hearings, which it would be competent to do in its own district.

5. An interested party may submit an application for judicial review of an order made on the grounds of section 41, subsection 1, to the Administrative Law Division of the Council of State. Section 68, subsection 1, shall apply *mutatis mutandis*.

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## **PART 2. ORDINARY CASES**

### *Unit 1. General*

#### **Section 70**

1. This part applies if parts 3 and 5 of this chapter do not apply.

2. A decision concerning the issue of a visa, including an authorisation for temporary stay, shall be equated for the purposes of this part with a decision given pursuant to this Act.

3. For the purposes of this part, an act of an administrative authority in respect of a person in his capacity of alien shall be equated with a decision.

#### **Section 71**

1. The operation of an order to reject an application or cancel a residence permit shall be suspended until the time limit for lodging a notice of objection or an application for administrative review has expired or, if an objection or application for administrative review has been lodged, until a decision has been taken on the objection or application for administrative review.

2. Subsection 1 shall not apply if the application has been rejected or the residence permit has been cancelled on the grounds referred to in section:

(a) 14, subsection 1 (a) or (d);

(b) 16, subsection 1 (e);

(c) 19, subsection 1 (b) or (d);

(d) 20, subsection 1 (c) or (d), unless the opinion of the Advisory Committee on Aliens Affairs is being obtained.

3. Subsection 1 shall also not apply if the order involves the rejection of a repeat application or if the notice of objection or the notice of administrative review has not been lodged in time.

#### **Section 72**

The interpreters called up by the Advisory Committee on Aliens Affairs shall be paid a fee from central government funds. The Criminal Proceedings Fees Act shall apply *mutatis mutandis*.

### *Unit 2. Objection*

#### **Section 73**

Notwithstanding section 7:1 of the General Administrative Law Act no objection may be lodged against a decision which:

(a) has been given on the grounds of section 52, subsection 2, or sections 54 or 57;

(b) contains a direction in accordance with sections 53, 55 or 56.

#### **Section 74**

If an objection is lodged against a decision on the grounds of this Act where the decision has been given by or on behalf of the chief of police pursuant to a mandate, a decision shall be taken on the notice of objection within sixteen weeks of receipt of the notice of objection, notwithstanding section 7:10 of the General Administrative Law Act.

*Unit 3. Administrative review*

**Section 75**

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1. An application may be lodged with Our Minister for administrative review of a decision implementing this Act which has not been taken by or on behalf of Our Minister. Section 10:3, subsection 2 (c), of the General Administrative Law Act shall not apply.
2. Notwithstanding subsection 1, no administrative review shall lie against a decision given on the grounds of section 6 and section 48, subsections 2 and 3.

*Unit 4. Application to the District Court*

**Section 76**

If application for provisional relief has been made in order to prevent expulsion before a decision has been taken on an objection or application for administrative review against a decision rejecting an application or cancelling a residence permit, the president of the District Court shall also decide as far as possible on that objection or application for administrative review.

**PART 3. ASYLUM**

*Unit 1. General*

**Section 77**

1. This part applies only if an application has been lodged for review of an order concerning a residence permit as referred to in sections 26 and 31.
2. This part applies *mutatis mutandis* if an application has been lodged for review of an order as referred to in section 41, subsection 1.

**Section 78**

Section 7:1 of the General Administrative Law Act shall not apply.

*Unit 2. Application for judicial review*

**Section 79**

Notwithstanding section 8:41, subsection 1, of the General Administrative Law Act no registry fee shall be levied by the registrar.

**Section 80**

1. The operation of an order concerning a residence permit shall be suspended until the time limit for applying for judicial review has expired or, if an application for judicial review has been lodged, until a decision has been taken on it.
2. Subsection 1 shall not apply if the order involves:
  - (a) the rejection of an application for a residence permit within a number of hours designated by Order in Council;
  - (b) the rejection of a repeat application, or
  - (c) an order as referred to in section 41, subsection 1.
3. Subsection 1 shall not apply if the application for judicial review has not been lodged in time.

**Section 81**

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1. In assessing an application for judicial review, the District Court may take account of facts and circumstances that have occurred since the disputed order was made, unless this would be contrary to due process of law or the disposal of the case would as a result be delayed to an unacceptable extent.
2. The power referred to in subsection 1 shall exist only in so far as the facts and circumstances may be relevant to the decision on the residence permit referred to in sections 26 and 31.
3. At the request of the District Court Our Minister shall inform the opposite party and the Court as quickly as possible whether the facts and circumstances that have been invoked are grounds for upholding, altering or cancelling the disputed order.

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**PART 4. APPEAL**

**Section 82**

Notwithstanding section 37, subsection 1, of the Council of State Act no appeal shall lie against a judgment of the District Court or of the president of the District Court:

- (a) on an order or act on the grounds of chapter 4, part 2, or chapter 5;
- (b) on a visa for a stay of less than three months;
- (c) after application of section 76, or
- (d) on the award of compensation as referred to in section 103.

**Section 83**

1. Further to section 6:5 (d) of the General Administrative Law Act the notice of appeal shall contain one or more grounds of appeal against the judgment of the District Court or the president of the District Court.
2. A ground of appeal shall describe the part of the judgment to which the appellant cannot reconcile himself and the grounds on which the appellant cannot reconcile himself to it.
3. The appeal shall be declared inadmissible in the event of noncompliance with subsection 1 or 2 of this section, section 6:5 of the General Administrative Law Act or any other requirement prescribed by law for the processing of an appeal. Section 6:6 of the General Administrative Law Act shall not apply.

**Section 84**

1. Notwithstanding section 40, subsection 4, of the Council of State Act the time limit within which the amount owed should be credited or deposited is two weeks. The president of the Administrative Law Division of the Council of State may prescribe a shorter period.
2. Notwithstanding section 40 of the Council of State Act, no registry fee shall be levied by the secretary if appeal is lodged against a judgment given pursuant to part 3 of the chapter.
3. Notwithstanding section 41 of the Council of State Act, no registry fee shall be levied by the secretary for a request for provisional relief if appeal is lodged against a judgment given pursuant to part 3 of the chapter.

**Section 85**

Notwithstanding section 38, subsection 2, of the Council of State Act the registrar of the District Court that has given the judgment shall, without delay, send the case documents and a copy of the judgment, and if possible a copy of the official record of the session, to the secretary to the Council of State

**Section 86**

1. Chapter 8 of the General Administrative Law Act - with the exception of part 8.1.1 and sections 8:13, 8:41, 8:54, subsection 2, 8:55, 8:74 and 8:82 - shall apply *mutatis mutandis* to the appeal in so far as not provided otherwise in this Act or in part 2 of title II of the Council of State Act.
2. Section 39 of the Council of State Act shall not apply.

**Section 87**

1. The Administrative Law Division of the Council of State shall hear the appeal, subject to application of part 8.2.3 of the General Administrative Law Act.

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2. The Administrative Law Division of the Council of State shall give judgment no later than twenty-three weeks after receipt of the notice of appeal.

**Section 88**

Notwithstanding section 8:18 of the General Administrative Law Act a request to challenge a member of the single-judge chamber shall be dealt with by a single-judge chamber in which the judge who has been challenged does not sit.

**Section 89**

1. When giving judgment the Administrative Law Division of the Council of State may confine itself to an assessment of the grounds of appeal.

2. If the Administrative Law Division of the Council of State is of the opinion that a ground of appeal does not warrant the setting aside of the decision it may confine itself to this opinion when stating the grounds of its judgment.

**Section 90**

Notwithstanding section 8:86 of the General Administrative Law Act the president of the Administrative Law Division of the Council of State may, when giving judgment on a request for provisional relief, also give judgment immediately in the main action if the request has not been dealt with at the court hearing.

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**PART 5. SPECIAL MEANS OF REDRESS**

**Section 91**

1. A measure for the restriction or deprivation of the liberty of an alien that has been taken pursuant to this Act shall be equated with an order for the purposes of section 8:1, subsection 1, of the General Administrative Law Act.
2. Section 7:1 of the General Administrative Law Act shall not apply.
3. Notwithstanding section 8:41 of the General Administrative Law Act no registry fee shall be levied by the registrar.

**Section 92**

1. Our Minister shall notify the District Court of an order imposing a custodial measure no later than on the third day after communication of the order, unless the alien has himself already lodged an application for judicial review. As soon as the District Court has received the notification the alien shall be deemed to have lodged an application for judicial review of the order imposing the custodial measure.
2. The District Court shall immediately determine the date of the court hearing. The hearing shall take place no later than on the seventh day after receipt of the application for judicial review or the notification. The District Court shall summon the alien to enter an appearance either in person or represented by counsel and shall summon Our Minister to enter an appearance through counsel in order to be heard. Notwithstanding section 8:42, subsection 2, of the General Administrative Law Act the time limit referred to in that section may not be extended.
3. The District Court shall give judgment orally or in writing. The written judgment shall be delivered within seven days of the conclusion of the hearing. Notwithstanding section 8:66, subsection 2, of the General Administrative Law Act the time limit referred to in that section may not be extended.
4. If the District Court is of the opinion, when hearing the case, that the application or implementation of the measure is contrary to this Act or is, on consideration of all the interests involved, not reasonably justified, it shall hold that the application for judicial review is well-founded. In such a case the District Court shall order that the measure be terminated or the manner of its implementation altered.

**Section 93**

1. If the District Court has held that the application for judicial review as referred to in section 92 is unfounded and the custody continues, Our Minister shall notify the District Court 92 of the continuation of the custody no later than four weeks after the judgment referred to in section, unless the alien has himself already lodged an application for judicial review. As soon as the District Court has received the notification the alien shall be deemed to have lodged an application for judicial review of the order continuing the custodial measure.
2. The District Court shall close the preliminary examination within a week of receiving the application for judicial review or the notification. Notwithstanding section 8:57 of the General Administrative Law Act the District Court may also determine without the consent of the parties that no hearing will be held in court.

3. The District Court shall give judgment orally or in writing. The written judgment shall be delivered within seven days of the conclusion of the examination. Notwithstanding section 8:66, subsection 2, of the General Administrative Law Act the time limit referred to in that section may not be extended.

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4. If the District Court is of the opinion, when hearing the case, that the application or implementation of the measure is contrary to this Act or is, on consideration of all the interests involved, not reasonably justified, it shall hold that the application for judicial review is well-founded. In such a case the District Court shall order that the measure be terminated or the manner of its implementation altered.

5. Our Minister shall give notice of the continuation of the custody no later than four weeks after the District Court has given judgment as referred to in subsection 3, unless the alien has himself already lodged an application for judicial review. Subsection 1, second sentence, and subsections 2 to 5 shall apply *mutatis mutandis*.

#### **Section 94**

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Rules governing the way in which an alien is interviewed may be laid down by Order in Council.

#### **Section 95**

1. Notwithstanding section 8:24 of the General Administrative Law Act the alien may be assisted at the hearings under sections 92 and 93 only by one or more of his legal counsel.

2. The legal counsel shall be given the opportunity at the hearing to make observations.

3. Only an attorney-at-law registered in the Netherlands or a person as referred to in section 16b of the Attorneys-at-law Act who works with an attorney-at-law registered in the Netherlands, in accordance with the provisions of section 16e of the Attorneys-at-law Act, shall be admitted as legal counsel.

#### **Section 96**

1. An alien shall always be authorised to appoint one or more legal counsel.

2. His statutory representative or his special attorney shall also be authorised to do so.

3. If the alien is unable to express his will in this connection and does not have a statutory representative or special attorney, his spouse or whichever of his relatives by blood or marriage, up to and including the fourth degree, is the first to act shall be authorised to appoint counsel. The president, acting *ex officio*, may assign one or more legal counsel if the persons referred to in the previous sentence are not considered able to make the choice within a reasonable period.

4. The legal counsel appointed under subsections 2 or 3 shall cease to act as soon as the alien himself has appointed legal counsel.

#### **Section 97**

1. Counsel shall be assigned to an alien at his request as soon as he has been deprived of his liberty under this Act. Section 96, subsection 3, shall apply *mutatis mutandis*.

2. The president of the District Court in the court district in which the alien is present shall be authorised to give instructions to the Legal Aid Office for the assignment of counsel.

3. In so far as the law makes no other provision for the assignment, the Legal Aid Office may assign a counsel to the alien at his request.

4. A request made in accordance with the previous subsection shall be granted in cases in which it is reasonable to assume that the alien would otherwise be unable to bear the costs of counsel and in which there are also, in

the opinion of that Legal Aid Office, sufficient grounds for the assignment of counsel.

**Section 98**

1. If the assigned counsel is unable to attend or is absent, another counsel shall, if necessary, be assigned to the alien without delay.
2. Another counsel may be assigned at the request of the assigned counsel or of the alien.
3. Assignment of another counsel shall be effected by the Legal Aid Office referred in section 97, subsections 2 or 3.
4. If the inability to attend or the absence of counsel becomes apparent only at the hearing under sections 92 and 93, the presiding judge shall give 37

instructions to the Legal Aid Office referred to in section 97, subsection 2 or 3, for the assignment of another counsel.

**Section 99**

Rules for the remuneration of assigned counsel, including attorneys-at-law who act as counsel pursuant to section 98, and for the reimbursement of their expenses shall be laid down by Order in Council.

**Section 100**

If Our Minister considers this desirable, he may recover the remuneration and expenses of an assignment under section 97 or 98 from the property of the alien. Rules concerning the manner of recovery and the manner of calculation of the amounts to be recovered shall be laid down by Order in Council.

**Section 101**

Counsel shall have free access to the alien. He may speak to him in private and correspond with him by letter without the contents of such correspondence being seen by any other person, subject always to the requisite supervision and in accordance with the rules laid down under this Act with regard to the regime applicable to the space or place where the alien is staying.

**Section 102**

Articles 585 to 590 of the Code of Criminal Procedure shall apply *mutatis mutandis* to judicial communications under sections 92 to 98.

**Section 103**

If the District Court orders that a custodial measure be terminated or if the alien is released before the request for termination of the measure is dealt with, the alien may be awarded compensation from central government funds. For this purpose damage includes any injury not consisting of financial loss. Articles 90 and 93 of the Code of Criminal Procedure shall apply *mutatis mutandis*. If the alien dies after submitting his application, the compensation shall be awarded to his heirs.

**CHAPTER 8. GENERAL AND CRIMINAL PROVISIONS**

*Unit 1. Provision of information*

**Section 104**

1. Our Minister or, as the case may be, the chief of police shall furnish other administrative authorities with the information concerning the residence status of an alien which they require for the performance of their duties.
2. Other administrative authorities shall be entitled, if acting of their own volition, and shall be obliged, if acting on request, to furnish Our Minister or, as the case may be, the chief of police, with the information necessary for the implementation of this Act. These administrative authorities may for this purpose make use of the national social security and tax registration number referred to in section 1 of the Municipal Database (Personal Records) Act.
3. The information referred to in subsections 1 and 2 shall not be furnished if this would prejudice the privacy of the person concerned to a disproportionate extent.

4. Rules concerning the cases and manner in which information must in any event be furnished shall be laid down by Order in Council.
5. For the purposes of subsections 1 to 4, the executive boards of publicly funded institutions and the governing boards of publicly funded schools and other educational establishments shall be equated with administrative authorities.

#### *Unit 2. Criminal provisions*

##### **Section 105**

1. Any person who infringes a regulation laid down by or pursuant to section 4, subsections 1 and 2, section 5, subsections 1 and 2, or section 44, subsection 2, opening words and (b), or who acts in contravention of section 54, subsection 1, or who fails to observe an obligation imposed by or pursuant to section 6, subsection 1, section 52, section 53, section 55, subsection 1, section 56, subsection 1, or section 63, subsection 3, shall be liable to detention not exceeding six months or a category 2 fine.
2. The offences punishable under subsection 1 shall be deemed to be summary offences.
3. The border control officers and aliens supervision officers shall be responsible for investigating the offences made punishable under subsection 1, without prejudice to article 141 of the Code of Criminal Procedure. These officers shall also be responsible for investigating the offences made punishable in articles 179-182 and 184 of the Criminal Code, in so far as such offences relate to a direction, instruction or act given or undertaken by them.

#### *Unit 3. Derogations*

##### **Section 106**

1. The operation of provisions of this Act may be wholly or partially suspended by Order in Council in order to implement a treaty or resolution of an international organisation binding on the Netherlands if this is necessary, in the opinion of the Cabinet, in order to implement the treaty or resolution within twelve months and if this Act must accordingly be amended to agree with the treaty or resolution.
2. The recommendation for an Order in Council to be adopted pursuant to subsection 1 shall not be made earlier than four weeks after the draft has been laid before the two Houses of the States General.
3. Our Minister shall ensure that a Bill intended to amend the Act in such a way that it agrees with the treaty or resolution referred to in subsection 1 is laid before the States General as quickly as possible after the adoption of an Order in Council adopted pursuant to subsection 1. If the Bill is withdrawn or is defeated in either House of the States General, the Order in Council shall be repealed immediately. If the Bill becomes law, the Order in Council shall cease to have effect on the date when the Act enters into effect.
4. For the purposes of a treaty in which border control has been transferred to external borders, references to "the Netherlands" in section 5, subsection 2, section 6, subsection 1, section 52, subsection 1, opening words and (a), section 54, subsection 2, and section 57, subsection 3, shall be construed as including the territory of other countries that are parties to the treaty, in so far as the operation of the treaty extends to such territory.
5. For the purposes of a treaty as referred to in subsection 4, the terms "public policy (*ordre public*)" and "national security" in section 3, subsection 1, and section 12, subsection 1, shall always be construed as including public policy or, as the case may be, national security of other countries that are parties to the treaty.

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##### **Section 107**

1. Without prejudice to section 7, subsection 1, and section 8, subsection 1, of the Coordination (Exceptional Circumstances) Act, section 108 may, in exceptional circumstances, be brought into operation by royal decree on the

recommendation of Our Prime Minister.

2. If the royal decree referred to in subsection 1 has been passed, a Bill providing for the continued operation of the provision made operational in such decree shall be laid before the Lower House without delay.

3. If the Bill is defeated in the States General the provision which has been made operational pursuant to subsection 1 shall be taken out of operation without delay by royal decree on the recommendation of Our Prime Minister.

4. The provision which has been made operational pursuant to subsection 1 shall be taken out of operation without delay by royal decree on the recommendation of Our Prime Minister as soon as, in Our view, circumstances permit this.

5. The royal decree referred to subsections 1, 3 and 4 shall be announced in the manner provided for therein. It shall enter into effect immediately after its announcement.

6. The royal decree referred to subsections 1, 3 and 4 shall in any event be published in the Bulletin of Acts, Orders and Decrees.

#### **Section 108**

Rules that derogate from chapters 1 to 7 may be laid down by Order in Council to provide for the eventuality of exceptional circumstances.

#### *Unit 4. Community citizens*

#### **Section 109**

Rule may be laid down by or pursuant to Order in Council in connection with the lawful residence of Community citizens and of aliens as referred to in section 8 (m), in which connection the rules may derogate from this Act in such a way as to benefit these aliens.

### **CHAPTER 9. TRANSITIONAL AND FINAL PROVISIONS**

#### **Section 110**

1. Subject to subsections 2 to 7 a right of residence that is valid on the date of entry into effect of this Act shall be deemed by operation of law to be a residence permit under this Act from that time onwards.

2. A permit for residence subject to restrictions shall be deemed to be a residence permit for a fixed period as referred to in section 13, subject to continuation of the restrictions and the period of validity.

3. A permit for permanent residence shall be deemed to be a residence permit for an indefinite period as referred to in section 18.

4. A permit for residence without restrictions shall be deemed to be a residence permit for an indefinite period.

5. An admission to the Netherlands pursuant to section 10, subsection 2, of the Aliens Act as worded prior to the entry into effect of this Act shall be deemed to be a residence permit for an indefinite period as referred to in section 18.

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6. A provisional permit for residence shall be deemed to be a residence permit for a fixed period as referred to in section 26, subject to the existing period of validity.

7. An admission as a refugee shall be deemed to be a residence permit for an indefinite period as referred to in section 31.

#### **Section 111**

During the first three years after the entry into effect of this Act the income requirements referred to in section 14, subsection 1 (c), section 16, subsection 1 (d), shall not be applied to:

(a) Netherlands nationals, or

(b) aliens who had been admitted to the Netherlands on the date of entry into effect of this Act.

Instead, the law applicable prior to the date of entry into effect of this Act shall remain in force.

**Section 112**

1. An application:

- (a) for the issue or renewal of a permit for residence,
- (b) for the issue of a permit for permanent residence,
- (c) for admission as a refugee,

which is being processed on the date of entry into effect of this Act shall be deemed to be an application for the issue of a residence permit under this Act.

2. The law that applied before the date of entry into effect of this Act shall continue to apply to the processing of applications as referred to in subsection 1.

**Section 113**

1. The law that applies prior to the date on which an order is notified under the Aliens Act - or an act is performed under the Aliens Act - before the entry into effect of this Act shall continue to govern the possibility of lodging an objection against such order or act.

2. The law that applies prior to the date on which an order is notified under the Aliens Act - or an act is performed under the Aliens Act - before the entry into effect of this Act shall continue to apply the processing of a notice of objection against such order or act.

**Section 114**

1. The law that applies prior to the date on which an order is notified under the Aliens Act - or an act is performed under the Aliens Act - before the entry into effect of this Act shall continue to govern the possibility of lodging an application for review of such order or act.

2. Section 67, subsection 2, shall not apply to an application for review of an order notified prior to the entry into effect of this Act. Instead, the law applicable prior to that date shall remain in force.

3. The law that applies prior to the date on which an order is notified under the Aliens Act - or an act is performed under the Aliens Act - before the entry into effect of this Act shall continue to govern the amount of the registry fee for an application for review of the order or act.

4. Section 81 shall not apply for eight weeks after the entry into effect of this Act to an application for review pending on the date of entry into effect of this Act.

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**Section 115**

An appeal as referred to in section 82 may be lodged only against a judgment of the District Court or the president of the District Court on an order that has been notified after the date of entry into effect of this Act.

**Section 116**

1. Part 5 of chapter 7 shall not apply to a custodial measure under the Aliens Act, which is taken prior to date of entry into effect of this Act. Instead, the law applicable prior to that date shall remain in force.

2. The law applicable prior to the date of entry into effect of this Act shall continue to apply to an alien who is in custody on the date of entry into effect of this Act and shall remain applicable until a notice as referred to in section 92, subsection 1, first sentence is given for the first time. Notwithstanding section 92, subsection 1, first sentence, this notice shall be given no later than on the twenty-eighth day after the District Court has given judgment for the last time on an application by the alien for judicial review of the custodial measure. If the alien has not applied for judicial review of the custodial measure, the notice shall be given no later than on the twenty-eighth day after the entry into effect of this Act.

**Section 117**

The Aliens Act is repealed.

**Section 118**

This Act shall enter into effect on a date to be fixed by Royal Decree, and provision may be made for the different sections or parts to enter into effect on different dates.

**Section 119**

This Act shall be cited as the Aliens Act 2000.