EUROPEAN UNION
THE COUNCIL

Brussels, 16 April 1998

7594/98

LIMITE

ASIM 99

NOTE

from : General Secretariat of the Council

to : Migration Working Party

Subject : Compilation of replies to the questionnaire on family reunification (see doc. 13552/2/97 ASIM 254 REV 2 and Telex No. 683 of 16 February 1998)

Delegations will find herewith the replies received from Denmark, Germany, Greece, Spain, Luxembourg, the Netherlands, Austria, Portugal, Finland, Sweden and the United Kingdom to the above-mentioned questionnaire. The reply from Belgium is being translated.

France, Ireland and Italy have not as yet replied.

QUESTIONNAIRE

1. **Notion of "expectation of permanent or long-term residence"**
(para 6 of introduction of Resolution WGI 1497 REV 1, and principle 1)

The Resolution applies only to family members of those third country nationals who are lawfully resident within the territory of a Member State on a basis which affords them an expectation of permanent or long-term residence.

a. Please list the categories of third country nationals whom you regard as falling within this definition (expectation of - or claim to - permanent or long-term residence).

b. In which of these categories do you allow admission of family members at the same time as the principal subject?

c. Is a minimum period of lawful residence required as a condition for allowing family reunification? If so, please specify for which categories and for which period.

d. If a waiting period is required, is this waiting period also applicable to nationals of non-EU states which are party to the European Social Charter.

e. In which of these categories must family reunion be applied for whilst the family members are outside your country?

f. In what categories and in what circumstances can an application for family reunion be made whilst the family members are already in your country?

2. **Persons entitled**

Under your legislation, who holds the right to apply for family reunification (i.e. the person to whom you are obliged to give grounds for refusal of admission, legal recourse against refusal, etc.)? Is it the third-country national already resident in the Member State or the family member abroad? Does the other interested party (the non-applicant) have any right to initiate an application?

3. **Refugees**

Refugees are outside the scope of the Resolution (para 9 of the introduction).

a. Are the rules and practice in your member State regarding the right to family reunification for refugees (in the sense of the Geneva Convention 1951) still the same as laid down in document 10240/96 ASIM 130? If not, please specify the changes.

b. In the case of persons who have been granted temporary or subsidiary protection, but not full refugee status within the sense of the Geneva Convention 1951, has the Resolution been considered as applicable? If not, which rules have been applied?

4. Spouses: Polygamous marriages (and relationships)

According to Principle 5 of the Resolution a wife and her children will not be admitted for the purpose of family reunification it the marriage is polygamous and the resident already has a wife living with him in the territory of a Member State.

a. Do you have specific laws governing polygamous marriages and/or polygamous relationships? If so please give details?

b. In the case of first admission, is the husband resident in your country free to choose the spouse to be admitted?

c. Is family reunification with a spouse and her children refused if there is already a spouse living with the resident in your country?

d. Can family reunification with a spouse and her children also be refused if another spouse who was already admitted to stay in your country has obtained an independent right of residence and lives apart from her husband? If so, please specify the details (for example, if there has been at a relevant moment a polygamous situation with these two or more spouses).

e. Can family reunification with a spouse/partner/children also be refused if there is already a non-married partner living with the resident in your country?

5. Unmarried partners

Family reunification with unmarried partners (including same-sex relations and fiancé(e)s) is outside the scope of the Resolution.

Does your policy and/or practice provide for family reunification (or family formation) with unmarried partners (including same-sex relationships and fiancé(e)s)? If so, please specify which relationships are accepted and under what conditions (including legal status and waiting periods as referred to in para 1 of this questionnaire)? How is abuse prevented?

6. Admission of children

According to Principle 6 and 7 of the Resolution, Member States reserve the possibility of admitting children who are the offspring of the resident or of his/her spouse but who are not of the couple involved; and of admitting adopted children.

a. Has your country used the possibility offered by these Principles to admit these categories of children; and if so, under what conditions (parental authority, custody of the child etc.)? Does this also extend to step-children of one of the partners?

b. Does it make any difference whether one parent has sole custody of the child or whether custody is shared by parents who are not married to each other, living apart or divorced?

7. Upper age-limit for children joining their parents

According to principal 8 of the Resolution, Member States should agree a maximum age limit for admission of children of between 16 and 18 years. (Article 26(2) of the draft Convention on the admission of third country nationals, sets the limit at the age of majority for the Member State.)

a. Up to what age may children join their parents in your country as the law stands at present? What other conditions apply? What are the reasons for the age limit set?

b. During the past five years have any rules other than the existing ones applied, for example that parents are allowed only a certain time to decide whether their children are to join them? If so please describe the previous legal position and the reasons for the change.

8. Independent residence status for family members

According to the Resolution (Principle 12) family members may, within a reasonable period of time following their admission, be authorised to stay on a personal basis independently from the person whom they joined on the basis of family reunification.

a. Does your national policy and/or practice provide for an independent residence status for family members? If so, what kind of status can be obtained and under what conditions? Please distinguish between married partners, non-married partners and children if appropriate.

b. Does the independent status give a right to work?
If so, under what conditions (work permit, etc)?

c. In order to obtain an independent residence permit, must the family relationship have ended or is it also possible to obtain an independent residence permit while the family relationship (marriage or children living with parents) still subsists?

d. Please describe specific policies, if any, for spouses in a vulnerable situation (victims of sexual harassment, abuse, exploitation, or if return to the county of origin is not advisable, for example for divorced women with young children).

9. General conditions for family reunification

According to Principle 16 of the Resolution, Member States reserve the right to make the entry and stay of family members conditional upon the availability of adequate accommodation and of sufficient resources to avoid a burden being placed on the public funds of the Member State concerned, and on the existence of sickness insurance.

a. How do you interpret the notion of "availability of adequate accommodation?"

b. How do you interpret the notion of "sufficient resources to avoid a burden being placed on the public funds of the Member State?"

c. Can an authorization to stay on the basis of family reunification be withdrawn or not extended if one of these conditions is no longer fulfilled (Principle 11)?

10. Identification of family members

Although the identification of family members is not covered by the Resolution, there are sometimes problems with the identification of family members and their relationship with the resident in a Member State especially if the family members cannot show valid documents.

a. What kind of methods or procedures does your country use to establish the identity of a family member and his or her relationship with the resident in your country?

b. On whom lies the burden of proof in this regard: the family member or the administration?

c. Is it possible to refuse admission if the identity or the family relationship is or remains doubtful?

d. If your country uses methods such as a blood test please explain the procedure, effect, costs, by whom these are met and whether these arrangements apply to <u>all</u> third country nationals.

e. Does your country take steps to check the authenticity of civil status documents produced in support of an application? If so please describe your practices?

11. Admission of parents

Do you allow family reunification with parents or other family members? If so, which, and under what conditions?

12. Family reunification with Students

Students are outside the scope of the Resolution (para 9 of the introduction).

Are members of the families of third country national students admitted to your country for family reunification? If so, what conditions apply?

13. Family reunification quotas

a. Can all persons meeting the conditions for admission for family reunification purposes enter your country immediately, or are quotas or time-scales applied? If so, what are they?

b. Does your country set a limit on the <u>total</u> number of family members who may join the person concerned?

14. **Requirements of constitutional law**

Does the constitution of your country set any conditions regarding legislation on family reunification? If so what are they?

15. **Article 8 of the European Convention on Human Rights**

How are the obligations resulting from article 8 of the European Convention taken into account in your policy and practice on family reunification?

16. **International Conventions**

Do you observe the principal of family reunification on the basis of any international conventions such as bilateral labour conventions entered into in the past?

17. **Ability to take employment**

Under what conditions are those admitted for family reunification permitted to work? Do you require a period of residence before such permission is given? If so, what is the relevant period?

18. **Other conditions**

Are there any other conditions for family reunification relevant in this regard but not covered in the Resolution or in the answers to the questions above (for example, minimum age for the admission of spouses).

19. **Scope for further work**

Please state your views on the possibility of further work in this area with a view to closer harmonisation of Member States' policies and procedures.

1. Notion of "expectation of permanent or long-term residence" (paragraph 6 of introduction of Resolution WGI 1497 REV 1, and principle 1).

The Resolution applies only to family members of those third country nationals who are lawfully resident within the territory of a Member State on a basis which affords them an expectation of permanent or long-term residence.

a. **Please list the categories of third country nationals whom you regard as falling within this definition (expectation of - or claim to - permanent or long-term residence).**

A. Nordic citizens.

According to section 1 of the Aliens (Consolidation) Act (Consolidation Act No. 650 of 13 August 1997 of the Danish Ministry of the Interior), nationals of Finland, Iceland, Norway and Sweden may enter into Denmark and stay in Denmark without special permission.

B. Refugees.

Upon application, a residence permit will be issued to an alien if the alien falls within the provision of the Convention relating to the Status of Refugees, 28 July 1951, cf. section 7 (1) of the Aliens (Consolidation) Act.

Furthermore, it appears from section 7 (2) that upon application a residence permit will also be issued to an alien who does not fall within the provision of the Convention relating to the Status of Refugees, 28 July 1951, but for reasons similar to those listed in the Convention or for other weighty reasons, ought not to be required to return to his country of origin. An application as mentioned in the first sentence hereof is also considered to be an application for a residence permit under subsection (1).

According to section 7(4), Subsection (1) and (2) apply correspondingly to an alien who is not in Denmark, if because of the alien's prolonged lawful stay in Denmark, of close relatives living in Denmark or of other similar attachment, Denmark must be deemed the country nearest to affording protection to that alien. The rule in the first sentence hereof does not apply to aliens staying in another EC-country.

Upon application, a residence permit will be issued to an alien who arrives in Denmark under an agreement made with the United Nations High Commissioner for Refugees or similar international agreement, cf. section 8 of the Aliens (Consolidation) Act.

A person, who has obtained a residence permit according to section 7 or 8, will each year during a period of 3 years be granted a time limited residence permit with a view to permanent residence. After 3 years the applicant will be granted a permanent residence permit.

C. Previously Danish national.

Upon application, a residence permit will be issued to an alien who has previously been a Danish national, cf. section 9 (1) (1) of the Aliens (Consolidation) Act.

If the applicant applies from abroad he will be granted a residence permit with a view to a permanent residence for 1 year provided the conditions for granting a residence permit are met. After 1 year the applicant will be granted a permanent residence permit.

If the applicant applies from Denmark, he/she will be granted a permanent residence permit right away provided the conditions for granting a residence permit according to this provision are met.

D. Spouses and unmarried partners.

According to section 9 (1) (2) of the Aliens (Consolidation) Act, a residence permit will, upon application be issued to an alien above the age of 18 who cohabits at a shared residence, either in marriage or in regular cohabitation of prolonged duration, with a person permanently resident in Denmark above the age of 18 who:

a: is a Danish national;
b: is a national of one of the Nordic countries;
c: is issued with a residence permit under section 7 or 8, or
d: has lawfully lived in Denmark for more than the last 5 years.

A person, who has obtained a residence permit according to section 9 (1) (2), will each year during a period of 3 years be granted a time limited residence permit with a view to a permanent residence. After 3 years the applicant will be granted a permanent residence permit.

E. Under-age children.

According to section 9 (1) (3) of the Aliens (Consolidation) Act, a residence permit will, upon application, be issued to an under-age child of a person permanently resident in Denmark or of that person's spouse, provided the child lives with the person having custody of it.

Furthermore, the residence permit granted to the parent of a child below the age of 18 will as a main rule include the child as well. Thus, the character of the residence permit of the child is dependent on the residence permit of the parent.

Consequently, if the child applies for family reunification from abroad, the child will be granted a one year residence permit as a relative to the principal subject for a year.

After 1 year the child is exempted from an individual residence permit.

If the parent(s) have permanent residence permits by the time the child turns 18, the child will also obtain a permanent residence permit upon application, provided there are no obstacles preventing the Danish authorities from granting a residence permit.

If the child has stayed lawfully in Denmark for a period of 3 years by the time he/she turns 18, the child will be granted a residence permit with a view to a permanent stay for 3 years, followed by a permanent residence permit.

If the child has lawfully stayed in Denmark for more than 3 years by the time he/she turns 18, the child will be granted a permanent residence permit.

If the child is not staying with his/her parents, the child will for maximum 5 years be granted a residence permit with a view to a temporary stay until the child turns 18.

Afterwards, the child will be granted a residence permit with a view to a permanent stay for 3 years followed by a permanent residence permit.

F. Parents.

Upon application, a residence permit will be issued to a parent above the age of 60 of a Danish or Nordic child or a child issued with a residence permit under section 7 or 8 of the Aliens (Consolidation) Act, cf. section 9 (1) (4) of the Aliens (Consolidation) Act.

Furthermore, a residence permit will, upon application, be issued to a parent above the age of 60 of an alien issued with a permanent residence permit. However, a residence permit will generally be issued only if the applicant has no other child in his country of origin, cf. section 9 (1) (5) of the Aliens (Consolidation) Act.

A person with a residence permit according to section 9 (1) (4) or 9 (1) (5) will each year during a period of 5 years be granted a time limited residence permit with a view to a temporary stay followed by a permanent residence permit.

G. Other aliens.

G.1. Close connection to Denmark

Upon application, a residence permit may be issued to other aliens, provided the alien, in cases not falling within section 9 (1), is closely connected through relatives or in a similar manner with a person permanently resident in Denmark, cf. section 9 (2) (1) of the Aliens (Consolidation) Act.

A residence permit according to section 9 (2) (1) based on a close relationship to relatives in Denmark is given with a view to a temporary stay for 1 year. Afterwards the applicant can obtain a residence permit with a view to a permanent stay each year for a period of 3 years. After 4 years the applicant can obtain a permanent residence permit.

G.2. Humanitarian reasons.

Upon application, a residence permit may be issued to an alien, in cases not falling within section 7 (1) and (2) of the Aliens (Consolidation) Act, who is in such a position that essential considerations of humanitarian nature conclusively make it appropriate, cf. section 9 (2) (2) of the Aliens (Consolidation) Act.

A residence permit according to this provision is granted as follows: 2 times 6 months with a view to a temporary stay, followed by 1 year with a view to a temporary stay. Afterwards a residence permit will be granted according to section 9 (2) (4) with a view to a permanent stay for 3 years followed by a permanent residence permit.

G.3. Considerations regarding employment or business.

Upon application, a residence permit according to section 9 (2) (3) of the Aliens (Consolidation) Act may be issued to an alien provided that essential employment or business considerations make it appropriate.

A residence permit according to this provision will be granted with a view to a temporary stay for 7 years, one year at the time. After 7 years the applicant may obtain a permanent residence permit.

G.4. Exceptional reasons.

Upon application, a residence permit may be issued according to section 9 (2) (4) of the Aliens (Consolidation) Act to an alien where exceptional reasons otherwise make it appropriate.

The issuance of a residence permit according to this provision is based upon a concrete evaluation of each individual case.

Section 9 (2) (4) may as an example be used in the following situations.

A spouse to a person with a residence permit according to section 9 (2) (3) may be granted a residence permit according to section 9 (2) (4).

On the basis of a concrete evaluation, a spouse who has a residence permit according to section 9 (2) (4) because the principal subject has a residence permit according to section 9 (2) (3) of the Aliens (Consolidation) Act, may be granted an independent residence permit after 7 years, provided the principal subject has applied for and obtained a permanent residence permit after 7 years of continued residence in Denmark.

A person with Danish parent(s) can obtain a residence permit according to this provision. The residence permit will be granted for 2 years, one at the time, with a view to a temporary stay followed by a permanent residence permit. The same applies to a person with Danish grandparent(s).

G.5. Ex-Yugoslavia etc.

According to section 9 (2) (5) of the Aliens (Consolidation) Act a residence permit may be issued if an alien holding a residence permit pursuant to the Act on Temporary Residence Permits for Certain Persons from Former Yugoslavia, etc., in cases not falling within section (7) (1) and (2) of the Aliens (Consolidation) Act, due to acts of war or similar disturbances in the area to which the applicant can otherwise return, must be assumed to need continued, temporary protection in Denmark.

A possible residence permit according to this provision will be granted with a view to a temporary stay for 6 months, 6 months and 1 year followed by a permanent residence permit.

According to section 9 (2) (6) of the Aliens (Consolidation) Act a residence permit may be issued to an alien from the Federal Republic of Yugoslavia (Serbia and Montenegro), who has applied in Denmark for a residence permit pursuant to section 7 before 11 October 1995, and whose application has been definitively refused, if the applicant can not at present enter the Federal Republic of Yugoslavia (Serbia and Montenegro).

A residence permit according to section 9 (2) (6) will be granted for 2 times one year with a view to a temporary stay followed by a permanent residence permit.

b. **In which of these categories do you allow admission of family members at the same time as the principal subject?**

It appears from section 9 (7) of the Aliens (Consolidation) Act that a residence permit under subsection (1) and subsection (2) (1) and (3) to (5) must be obtained before the entry into Denmark.

According to section 9 (1) (2) (d) of the Aliens (Consolidation) Act (mentioned under 1.a.D) it is a precondition for the issuance of a residence permit that the principal subject has lawfully lived in Denmark for more than the last 5 years.

In other cases, family reunification will depend upon whether the person in Denmark has a residence permit with a view to a permanent stay, cf. sections 9 (1) (2) and (4). For an elaboration, please see the provisions as quoted above.

It follows from section 9 (1) (5) that a residence permit will, upon application, be issued to a parent above the age of 60 of an alien issued with a permanent residence permit.

It is thus a condition for the issuance of a residence permit to a person who applies according to section 9 (1) (5), that the principal subject has a permanent residence permit.

c. **Is there a minimum period of lawful residence required as a condition for allowing family reunification? If so, please specify for which categories and for which period.**

Please see the previous paragraph regarding this question.

d. **If a waiting period is required, is this waiting period also applicable to nationals of non-EU states which are party to the European Social Charter?**

Yes.

e. **In which of these categories must family reunion be applied for whilst the members are outside of your country?**

The main rule is that the applicant has to apply from abroad, but the immigration authorities also accept an application handed in in Denmark.

f. **In what categories and in what circumstances can an application for family reunion be made whilst the family members are already in your country.**

Please see the answer to question 1.c.

2. Persons entitled.

Under your legislation, who holds the right to apply for family reunification (i.e. the person to whom you are obliged to give grounds for refusal of admission, legal recourse against refusal, etc.)? Is it the third-country national already resident in the member state or the family member abroad? Does the other interested party (the non-applicant) have any right to initiate an application?

As a main rule it is the family member abroad who holds the right to initiate an application.

The applicant has to submit an application form to the Danish Immigration Service unless the Danish Immigration Service already possesses all the information which is necessary in order to make a decision regarding the application.

If another person than the applicant submits the application or a residence permit according to the provisions regarding family reunification for the applicant, the application must be signed by the applicant, unless the person acting on behalf of the applicant represents the applicant, and the Danish Immigration Service has received documentation for the representation.

3. Refugees

Refugees are outside the scope of the resolution (para 9 of the introduction).

a. **Are the rules and practice in your member state regarding the right to family reunification for refugees (in the sense of the Geneva Convention 1951) still the same as laid down in document 10240/96 ASIM 130? If not, please specify the changes.**

Apart from minor changes in certain specific cases, the main rules and practice are the same.

b. **In the case of persons who have been granted temporary or subsidiary protection, but not full refugee status within the sense of the Geneva Convention 1951, has the resolution been considered as applicable? If not, which rules have been applied?**

In the case of temporary and subsidiary protection the resolution can be considered applicable (however, not fulfilling).

4. Spouses: Polygamous marriages (and relationships).

According to Principle 5 of the Resolution a wife and her children will not be admitted for the purpose of family reunification if the marriage is polygamous and the resident already has a wife living with him in the territory of a Member State.

a. **Do you have specific laws governing polygamous marriages and/or polygamous relationships? If so, please give details?**

There is no specific Danish laws governing polygamous marriages and relationships. Certain rules exist in the Danish Formation and Dissolution of Marriage Act, the Danish Order on the Formation of Marriage, the Danish Administration of Justice Act and the Danish Penal Code.

b. **In the case of first admission, is the husband resident in your country free to choose the spouse to be admitted?**

According to section 9 of the Danish Formation and Dissolution of Marriage Act, a person who has previously entered a matrimony is not allowed to enter a new matrimony as long as the

first matrimony subsists. A matrimony which has been entered contrary to section 9 will be annulled by a decree unless the former matrimony has ended before proceedings are instituted.

If the parties have entered a bigamous (or polygamous) matrimony abroad, the matrimony is considered valid according to Danish legislation, provided the country where the parties have entered the matrimony recognizes the marriage as entered validly in procedural regards and recognizes bigamous marriages in substance.

The person resident in this country is free to choose which one of the spouses should be admitted, but can not choose admission of both of them.

The question of institution of proceedings regarding annulment of a matrimony is decided in pursuance of section 448 c of the Danish Administration of Justice Act. According to this provision the proceedings regarding annulment can be instituted if the bigamist was permanently residing in this country at the time when the matrimony was entered, regardless of in which country the parties entered into matrimony.

If the bigamy matrimony is recognized according to Danish legislation, and the bigamist permanently resided in Denmark at the time when the matrimony was entered, the administrative authority regarding civil matters must be informed of the bigamy relationship with a view to institution of proceedings regarding annulment of the matrimony and possibly institution of proceedings regarding criminal liability, cf. section 28 (2) (3) of the Danish Administration Act.

If the Danish Immigration Service has notified the administrative authority regarding civil matters regarding a bigamy matrimony with a view to institution of proceedings regarding annulment of the matrimony, the Danish Immigration Service will inform the applicant in the decision concerning the application for residency in Denmark, that the Danish Immigration Service has knowledge of the previous matrimony, that the Immigration Service has informed the administrative authority regarding civil matters with a view to institution of proceedings regarding annulment of the matrimony, and that the residence permit may be revoked according to section 19 (1) (1) of the Aliens (Consolidation) Act, if the matrimony, which is the foundation of the permit, is annulled at a later stage.

c. **Is family reunification with a spouse and her children refused if there is already a spouse living with the resident in your country?**

Yes.

d. **Can family reunification with a spouse and her children also be refused if another spouse who was already admitted to stay in your country has obtained an independent right of residence and lives apart from her husband? If so, please specify the details (for example, if there has been at a relevant moment a polygamous situation with these two or more spouses).**

If the person resident in this country is still married to the spouse also resident in this country, admission of the second spouse applying from abroad can be refused.

If, however, the person resident in this country is divorced from his wife, who continues to reside in this country, the wife applying from abroad may be granted a residence permit provided the remaining conditions for granting a residence permit are met.

e. **Can family reunification with a spouse/partner/children also be refused if there is already a non-married partner living with the resident in your country.**

Yes, if the residence permit to the person living with the resident in Denmark has been granted on the basis of regular cohabitation of prolonged duration according to section 9 (1) (2) of the Aliens (Consolidation) Act.

5. Unmarried partners.

Family reunification with unmarried partners (including same-sex relations and fiancé(e)s) is outside the scope of the Resolution.

Does your policy and/or practice provide for family reunification (or family formation) with unmarried partners (including same-sex relations and fiancé(e)s? If so, please specify which relationships are accepted and under what conditions (including legal status and waiting periods as referred to in paragraph 1 of this questionnaire)? How is abuse prevented?

The application of section 9 (1) (2) of the Aliens (Consolidation) Act is not limited to heterosexual relationships but also applies to same-sex relationships.

As far as unmarried partners and fiancées are concerned, it follows from section 9 (1) (2) that upon application a residence permit will be issued to an alien above the age of 18 who cohabits at a

shared residence in regular cohabitation of prolonged duration with a person permanently resident in Denmark.

During the evaluation regarding whether the parties have cohabited at a shared residence in regular cohabitation of prolonged duration, the Danish Immigration Service may attach importance to the duration of the relationship.

As a main rule, a year and a half/two years of shared residence in regular cohabitation is considered sufficient to characterize the relationship as being a regular cohabitation of prolonged duration. However, other factors, such as frequent and regular phone calls, visits and letters, may be included in the evaluation.

In order to prevent abuse regarding this provision, the Danish Immigration Service asks the parties to provide documentation for the cohabitation, written contact, visits or phone calls.

6. Admission of children.

According to principle 6 and 7 of the Resolution, Member States reserve the possibility of admitting children who are the offspring of the resident or of his/her spouse but who are not of the couple involved, and of admitting adopted children.

a. Has your country used the possibility offered by these Principles to admit these categories of children, and if so, under what conditions (parental authority, custody of the child etc.)? Does this also extend to step-children of one of the partners?

The Danish Immigration Service understands the question as relating to children of only one of the parents of the couple as well as adopted children.

The residence permit granted to the parent of a biological child below the age of 18 will as a main rule include the child as well, provided the conditions for granting the residence permit are met.

Furthermore, a biological child to a parent resident in this country can apply for a residence permit according to section 9 (1) (3) of the Aliens (Consolidation) Act, as mentioned above.

These rules also apply to a child, who has already been adopted by one of the parents.

It is a precondition for granting a residence permit to these two categories of children, that the child is below the age of 18 at the time of application, and is going to live with the person having custody of it.

As a main rule the residence permit of the child will be cancelled if the child founds his/her independent family.

Please note, that if the parent has been granted a residence permit according to section 9 (2) (2) - 9 (2) (6) of the Aliens (Consolidation) Act, a child below the age of 18 may be granted a residence permit according to section 9 (2) (4) of the Aliens (Consolidation) Act.

If the child is adopted, after the parent was granted a residence permit in Denmark, the child can apply for a residence permit according to section 9 (2) (1) of the Aliens (Consolidation) Act.

The adoption has to be recognized as valid according to Danish legislation by an administrative authority in Denmark.

b. **Does it make any difference whether one parent has sole custody of the child or whether custody is shared by parents who are not married to each other, living apart or divorced?**

No.

7. Upper age-limit for children joining their parents.

According to principal 8 of the Resolution, Member States should agree a maximum age limit for admission of children between 16 and 18 years. (Article 26(2) of the draft Convention on the admission of third country nationals, sets the limit at the age of majority for the Member State).

a. **Up to what age may children join their parents in your country as the law stands at present? What other conditions apply? What are the reasons for the age limit set?**

According to section 9 (1) (3) of the Aliens (Consolidation) Act the age limit is 18 years. However, under certain circumstances a residence permit may be granted to a child above the age of 18 according to section 9 (2) (1) of the Aliens (Consolidation) Act.

This may for instance be the case if the rest of the family has been granted a residence permit according to section 9 (1) of the Aliens (Consolidation) Act.

Section 9 (2) (4) of the Aliens (Consolidation) Act also includes a possibility for granting a child above the age of 18 a residence permit, if the rest of the family has been granted a residence permit in Denmark.

This could for instance be the case, when the child is handicapped and can not be taken care of in the home country of the child, or if the child risks spite and to be an outcast of the society in the home country of the child.

According to Danish law, a person becomes an adult at the age of 18 and is thus legally competent. By that age a person is no longer subject to the responsibility of his/her parents. The age limit is set on these grounds.

b. **During the past five years have any rules other than the existing ones applied, for example that parents are allowed only a certain time to decide whether their children are to join them? If so please describe the previous legal position and the reasons for the change.**

No.

8. Independent residence status for family members

According to the Resolution (Principle 12) family members may, within a reasonable period of time following their admission, be authorized to stay on a personal basis independently from the person whom they joined on the basis of family reunification.

a. **Does your national policy and/or practice provide for an independent residence status for family members? If so, what kind of status can be obtained and under what conditions? Please distinguish between married partners, non-married partners and children if appropriate.**

Please see the answer to question 9a and note that when a person obtains a permanent residence permit, the permit is no longer dependent on the residence permit of the principal subject.

c. **Does the independent status give a right to work? If so, under what conditions (work permit etc)?**

The following categories of persons will be issued with a work permit from the moment they receive the residence permit and will thus from that moment have a right to work:

- category C: Previously Danish nationals
- category D: Spouses and unmarried partners
- category E3: Considerations regarding employment and business
- category E4: children of Danish parents or grandparents
- category E5: Ex-Yugoslavia etc.

A refugee, category B, is subject to exemption from work permit, and is allowed to work from the moment the residence permit is granted.

As far as category E, under-age children, is concerned, the child may obtain a work permit when the child turns 18. Under special circumstances, however, children may obtain a work permit for certain types of jobs while still under-age.

A parent, category F, is subject to exemption from work permit when the permanent residence permit is granted after 5 years.

Persons who have a residence permit due to humanitarian reasons, category E 2, obtain a work permit after 1 year.

The spouses, who have obtained a residence permit according to section 9 (2) (4) of the Aliens (Consolidation) Act, category E 4, also receive a work permit if they receive a permanent residence permit after 7 years.

However, according to the Danish Executive Order on Aliens (Order no. 19 of 18 January 1984, as amended by order no. 689 of 17 August 1995) section 31 (3) and practice, an exception can be made for a spouse who has obtained a residence permit according to section 9 (2) (4) after 2 years of continued residence in Denmark.

d. **In order to obtain an independent residence permit, must the family relationship have ended or is it also possible to obtain an independent residence permit while the family relationship (marriage or children living with parents) still subsists?**

It is also possible to obtain an independent residence permit while the family relationship still subsists.

e. **Please describe special policies, if any, for spouses in a vulnerable situation (victims of sexual harassment, abuse, exploitation, or if return to the country of origin is not advisable, for example for divorced women with young children).**

According to section 19 (1) (1) (1) of the Aliens (Consolidation) Act, a time limited residence permit may be revoked if the grounds referred to in the application or permit, including applications and permits issued under section 7 and 8, were not correct or are no longer present.

According to section 19 (2) the provision of subsection (1) does not apply to an alien falling within section 7, 8 or 9 (1) (2) and having for the purpose of permanent residence lawfully lived in Denmark for more than the last 3 years.

It follows from section 26 that in deciding on expulsion, regard shall be taken not only to the alien's ties with the Danish community, including the duration of his stay in Denmark, but also to the question of whether expulsion must be assumed to be particularly burdensome on him/her.

Section 26 (1) applies correspondingly to decisions on revocation of residence permit, cf. section 19 (5).

According to section 26 (1) (6) importance must be attached to whether the expulsion will be particularly burdensome to the applicant because of exposure to outrages, misuse or other harm, etc., in Denmark causing that an alien holding a residence permit pursuant to section 9 (1) (2) is no longer cohabiting at a shared residence with the person permanently resident in Denmark or the alien's otherwise particularly weak position.

It follows from the explanatory notes to section 26 (1) (6) that if the alien is no longer cohabiting with the person resident in Denmark due to violence, it will be a precondition for continued residence in Denmark that it can be documented to the relevant authorities, that the alien has been exposed to violence and that the violence is the reason why the alien is no longer cohabiting with the person resident in Denmark.

In case of revocation according to section 19, the relevant Danish authorities may attach importance to whether the alien, who risks revocation, has the custody of under-age children.

9. General conditions for family reunification.

According to Principle 16 of the Resolution, Member States reserve the right to make the entry and stay of family members conditional upon the availability of adequate accommodation and of sufficient resources to avoid a burden being placed on the public funds of the Member State concerned, and the existence of sickness insurance.

a. **How do you interpret the "availability of adequate accommodation"?**

The availability of accommodation is not included in the criteria regarding residence permits.

b. **How do you interpret the notion of "sufficient resources to avoid a burden being placed on the public funds of the member states"?**

According to section 9 (3) of the Aliens (Consolidation) Act a residence permit issued under subsection(9) (1) (5) or subsection (2) (1) must be made conditional upon the person living in Denmark taking on himself the maintenance of the applicant, and his proving to be able to do this.

According to section 9 (4) of the Aliens (Consolidation) Act, a residence permit issued under subsection 9 (1) (2) to a person who cohabits, and a residence permit under section (9) (1) (4) may be made conditional upon the person living in Denmark taking on himself the maintenance of the applicant. A residence permit issued under section (9) (1) (2) to (4) may further be made conditional upon the person living in Denmark who has taken on himself the maintenance of the applicant proving to be able to do this.

c. **Can an authorization to stay on the basis of family reunification be withdrawn or not extended if one of these conditions is no longer fulfilled (Principle 11)?**

Yes. It follows from section 18 (1) of the Aliens (Consolidation) Act that a residence permit lapses when for reasons of maintenance it has been decided that an alien not having the means required for his own maintenance is to be returned to his country of origin.

However, according to section 18 (2) the provision of section (18) (1) does not apply if the alien has lawfully lived in Denmark for more than the last 3 years.

10. Identification of family members.

Although the identification of family members is not covered by the Resolution, there are sometimes problems with the identification of family members and their relationship with the resident in a Member State if the family members cannot show valid document.

a. **What kind of methods or procedures does your country use to establish the identity of a family member and his or her relationship with the resident in your country?**

Depending on the situation, the relevant administrative authority in Denmark may ask the applicant and the resident in this country to answer questions necessary for the decision of the administrative authority, to present original documents such as birth certificates etc., or participate in age and/or blood test.

b. **On whom lies the burden of proof in this regard: the family member or the administration?**

The family member.

c. **Is it possible to refuse admission if the identity or the family relationship is or remains doubtful?**

Each case has to be evaluated on an individual basis in this regard, but in some cases it will be necessary to refuse admission of a family member.

d. **If your country uses methods such as a blood test please explain the procedure, effects, costs, by whom these are met and whether these arrangements apply to all third country nationals.**

For the examination of an application for a residence permit under section 9 of the Aliens Act, the immigration authorities may require the applicant and the person with whom the applicant states that he has the family tie on which the residence permit is based, to assist in DNA examination with a view to determining the family tie, if such tie cannot otherwise be deemed sufficiently evidenced, cf. section 40 c of the Aliens (Consolidation) Act.

Before a decision regarding a DNA examination is made, the immigration authorities will examine the authenticity of the documents presented to the immigration authorities.

In the cases, where the immigration authorities have decided upon a DNA examination, the immigration authorities ask for the consent of the person resident in Denmark to perform the examination. If the person refuses to give his/her consent, this will as a main rule entail a sanction of procedural nature, i.e. this may have a prejudicial effect on the case of the applicant.

In Denmark the DNA examination is performed by the University of Copenhagen.

The blood-test is taken by the Danish representation in the country, where the applicant has applied for family reunification.

The identity of the person who has to be examined is ensured by photographs received by the representation abroad and sent to the University of Copenhagen.

The cost of the DNA examination is approximately 7.000,00 Danish kroner.

The Immigration Service pays for the examination. However, if the examination proves that the persons involved have not provided the immigration authorities with truthful information, the immigration authorities will demand compensation for the expenses incidental to the examination.

11. Admission of parents.

Do you allow family reunification with parents or other family members? If so, which, and under what conditions?

Please see the answer to question number 1 a and 9 a-b.

12. Family reunification with students.

Students are outside the scope of the Resolution (paragraph 9 of the Introduction). Are members of third country national students admitted to your country for family reunification? If so, what conditions apply?

Based upon a concrete evaluation of each individual case, family members (spouses and children) may be entitled to a residence permit according to section 9 (2) (4), if the spouse/parent has a residence permit in Denmark as a student.

In the evaluation the immigration authorities attach importance to factors such as the period of time the student has been studying in Denmark, what the student is studying, the attachment of the student to Denmark and the attachment to his/her home country.

It is a criteria, that the economical foundation of the family is ensured, i.e. the student and the spouse must earn at least 75.000,00 Danish kroner in total per year.

13. Family reunification quotas.

a. **Can all persons meeting the conditions for admission for family reunification purposes enter your country immediately, or are quotas or time-scales applied? If so, what are they?**

There are no quotas. However, not all persons meeting the conditions for admission for family reunification purposes can enter Denmark immediately, cf. the answer to question 1.

b. **Does your country set a limit on the total number of family members who may join the person concerned?**

No.

14. Requirements of constitutional law.

Does the constitution of your country set any conditions regarding legislation on family reunification? If so, what are they?

No.

15. Article 8 of the European Convention on Human Rights.

How are the obligation resulting from article 8 of the European Convention taken into account in your policy and practice on family reunification?

The European Convention on Human Rights has been incorporated into the Danish legislation by statute 1992-04-29 no. 285 and is thus an integrated part of Danish legislation which the immigration authorities are obliged to apply accordingly.

16. International Conventions

Do you observe the principal of family reunification on the basis of any international conventions such as bilateral labour conventions entered into in the past?

Whereas the principal of family reunification in Danish law is influenced by international conventions in general, it is not connected to any specific convention.

17. Ability to take employment

Under what conditions are those admitted for family reunification permitted to work? Do you require a period of residence before such permission is given? If so, what is the relevant period?

Please see the answer to question 8 b.

18. Other conditions.

Are there other conditions for family reunification relevant in this regard but not covered in the Resolution or in the answers to the questions above (for example, minimum age for admission of spouses).

The minimum age for spouses is 18 years.

Please see the answer to question 1 a, where each provision is quoted.

19. Scope for further work.

Please state your views on the possibility of further work in this area with a view to closer harmonization of Member States' policies and procedures.

Denmark has a positive view on the harmonization, but realizes that full and effective harmonization will require an extensive amount of work throughout a vast time-span.

Re question 1(a):

For third-country nationals, the German law on aliens makes provision for the following types of long-term residence/confirmed right of residence which might result in a future claim to long-term or permanent residence:

- Residence entitlement under Article 27 of the Aliens Law (AuslG) as the most solid confirmation of an alien's right of residence, which is unlimited in time and space and cannot be made subject to any conditions or restrictions.

- Residence permit under Article 15 AuslG which can be granted on either a limited or unlimited basis. In principle, a limited residence permit is granted initially which subsequently after a particular "waiting period" has elapsed can be extended for an unlimited period. These waiting periods depend on the status of the alien (e.g. family reunification, as a rule unlimited extension after a five-year period).

- In principle a residence licence can also lead to permanent residence where it is extended on a discretionary basis to an unlimited residence permit. However, the residence licence constitutes a special case where an alien should be granted entry into the Federal Republic of Germany and residence in Federal territory on grounds connected with international law or pressing humanitarian grounds or to safeguard the political interests of the Federal Republic of Germany, and where the grant of a residence permit is (for the moment) out of the question (see Article 30 AuslG).

- With the above categories, depending on the grounds for the grant of a residence authorization (generic term for all the residence documents described) a distinction is to be made according to claims and discretionary decisions. Family reunification, i.e. being joined by the spouse and unmarried children under 16 years of age, qualifies in principle as a claim which is particularly applicable in the case of families joining aliens who already hold residence permits, are recognized as entitled to asylum, have entered the Federal Republic as minors or were born there. Discretionary powers are available in other cases, e.g. families joining aliens living in Germany on only a residence licence.

- A residence certificate, e.g. for study purposes, is limited from the outset to a particular purpose and cannot be made more permanent. As a result, the law provides that a residence permit can be issued only once the alien has in the meantime spent at least a year abroad. Exceptions are possible, however, for marriage, although the temporary nature of the residence certificate remains.

Re question 1(b):

As indicated, a claim to family reunification presupposes in principle established residence by the alien in Germany, as a rule a residence entitlement, recognized refugee status, etc. An exception to the requirement of established residence is possible in cases where the marriage already existed when the alien entered the country and was declared by him when he first made his application for a residence permit. In other cases there is no claim to the issue of a residence permit for family members wishing to join him and the question is a matter for the authorities' discretion. However, this discretion is coloured by Article 6 of the Basic Law (GG) which gives particular protection to marriage and the family. The alien is admitted in principle together with family members when, for instance, both partners are recognized as being entitled to asylum.

Re question 1(c):

A family member has a claim to join an alien who is legally resident in Germany if the said alien holds a residence entitlement. That entitlement can be issued if he has held a residence permit for eight years or an unlimited residence permit for three years and before that held a residence licence. In exceptional cases as referred to above where the alien was already married on entry and declared this fact in his application for a residence permit, the claim to reunification is valid without the need for a minimum period of lawful residence in Germany.

In addition some discretion is available so that, for example, the period can be reduced to five years where the alien has been legally resident in the Federal Republic for that length of time and the marriage has produced a child or the wife is expecting a child. Where the alien entered Germany as a minor or was born in Germany and holds an unlimited residence permit or residence entitlement, a period of eight years' lawful residence in Federal territory is adequate basis for a family reunification claim. Where the individual is granted refugee status, there is no requirement for a minimum period of lawful residence.

Re question 1(d):

Where the legal preconditions are met, no waiting periods apply. This rule is valid for all third-country nationals.

Re question 1(e):

In principle, an application for family reunification is to be made from abroad under the visa procedure by the family member wishing to enter Germany. The relevant representation abroad informs the appropriate authorities with responsibility for aliens which must establish the further conditions for a family member joining an alien. An entry visa is then issued and in Germany a residence permit, initially limited in time, is prepared by the authorities responsible for aliens.

Re question 1(f):

If the family member wishing to join the alien is already resident lawfully or on sufferance in German territory, the application may, under a regulation implementing the Aliens Law (see Article 9 DVAuslG), also be submitted from within the country without it being necessary to leave the country to make the application.

Re question 2:

An application for family reunification (i.e. either a visa application to the representation abroad or, in cases covered by Article 9 DVAuslG, an application to the competent authorities responsible for aliens) must always be submitted by the family member seeking to join the alien or by his legal representative (in the case of children). The person entitled to a balanced use of discretionary powers in accordance with the Aliens Law is thus always the family member seeking family reunification. In principle, however, it must be remembered that the alien who is lawfully resident in Germany is also covered by the protection afforded marriage and the family under Article 6(1) of the Basic Law and to respect for his family life under Article 8 of the European Human Rights Convention (EHRC) and as a result is entitled to invoke these against any decision of the administrative authorities or administrative courts affecting his marital or family situation. In a particular case, this can extend to include a subjective official right with the result that the resident alien has a claim in his own right. However, in normal circumstances this situation does not arise.

1. (a) Foreign nationals lawfully living and working in Greece; members of their families; foreign nationals who are members of families of Greek nationals; students.
   (b) Admission of family members at the same time as the principal subject is permitted in the case of those lawfully employed on the basis of bilateral agreements, and for members of the family of the foreign spouse of a Greek national (children below the age of majority).
   (c) In cases other than those referred to in the immediately preceding section, the principal subject is required to have been lawfully resident and employed in the country for five years.
   (d) No waiting period is required.
   (e) In the case of the categories in section (c) family reunion is applied for while family members are outside the country.
   (f) Application for family reunion is permitted in cases where the family members are outside the country.

2. Foreign nationals living and working in Greece have the right to apply for family reunification.
   A family member applying for the renewal of his/her residence permit has the right to apply, unless he/she is a minor.
   In the event of the application being rejected, reasons must be given for the rejection and the applicant has the right of appeal.

3. (a) In this specific case, Greek law has been changed and proceedings are under way for the issue and entry into force of the relevant decree concerning the conditions and procedure for approving the admission and residence of protected members of the families of recognized refugees within the framework of family reunification.
   The provisions of the decree will be known as soon as it is published in the Greek Official Gazette.
   (b) In the case of persons who have been given temporary protection but not full refugee status (within the meaning of the 1951 Geneva Convention) the Resolution is applicable.

4. (a) Greece has no specific laws on polygamy or polygamous relationships.
   (b) Yes, the husband is free to choose the spouse to be admitted.
   (c) Another spouse is not admitted and allowed to stay where there is already a spouse living with the foreign national resident in Greece.
   (d) Reunification with another spouse and his/her children is permitted where the previous spouse ends the marriage and no longer lives under the same roof. If the marriage continues to exist, even if the couple does not live together, reunification with another spouse is not permitted; in such cases reunification is allowed only with children of the national who is resident in Greece.
   (e) Reunification with the spouse and children where there is a non-married partner living with the person resident in Greece is not prohibited, given that cohabitation outside marriage does not produce legal effects.

5. There is no provision for reunification of non-married partners.

6. (a) Greece reserves the possibility of admitting certain categories of offspring only if they fulfil the conditions of Greek law (custody of children, adoption of children, etc.).

(b) If the person with the right of residence has been lawfully deprived of the right of custody of the child or of parental care, the admission of children is not permitted as the conditions of paragraph (a) apply.

7. (a) As the law stands at present (Law 1975/91, Article 14(2)), children qualifying for reunification must be unmarried and under 18 years of age.
(b) No rules other than the existing ones have been in force.

8. (a) The legislation in force provides for independent residence status for family members attaining the age of majority and having sufficient resources to covertheir accommodation and maintenance requirements.
(b) A family member with independent residence status is granted the right to work subject to compliance with Greek labour legislation.
(c) Independent residence permits are granted to family members who are foreign nationals once they reach the age of majority.
(d) Greece always takes account of particular situations, humanitarian considerations and other cases that require a specific approach for spouses in vulnerable situations.

9. (a) "Adequate accommodation" means accommodation providing basic living conditions as regards safety and hygiene.
(b) "Sufficient resources" means sufficient so as not to create a burden on the social welfare system and exceeding the level of the minimum social security pension.
(c) Where one or all of the conditions of Principle 16 of the Resolution are not fulfilled, an authorization to stay on the basis of family reunification may be withdrawn or its extension may be refused.

10. (a) In Greece, identity is established by means of the official documents produced and correspondence with the relevant embassies and consulates.
(b) The burden of proof lies with the family member.
(c) Admission may be refused if the identity or family relationship is or remains doubtful.
(d) In Greece, blood tests are not used to check relationships.
(e) According to the type of document, Greece checks the authenticity of documents produced taking the following steps:
(aa) where the document is alleged to have been issued by a foreign authority, authenticity is checked with the appropriate embassy or consulate.
(bb) where the document is alleged to have been issued by a Greek authority, authenticity is checked in collaboration with the authority alleged to have issued it.
(cc) Using modern scientific means, the Forensic Research Directorate of the Ministry of Public Order examines each case to check authenticity, falsification, etc.
(dd) The entry-point services take the same steps to check the authenticity of entry stamps.
(ee) Finally, our services have special equipment to check the authenticity of travel documents.

11. Family reunification with family members is permitted for a foreign national lawfully employed in Greece if, prior to his arrival, the persons concerned were living under the same roof as and were supported by him.The spouse, his/her unmarried children under the age of eighteen and the parents of the foreign national are considered as family members.

12. Members of the families of foreign students are admitted for visits of limited duration.

13. (a) All persons meeting the conditions for admission for family reunification purposes have an immediate right of entry into Greece.
    (b) Greece sets no limits on the total number of family members who may join the person concerned.

14. The Greek constitution protects the family as an institution, without discrimination.

15. Both the Greek constitution and Greek law fully protect the rights of foreign nationals and of their family members in accordance with Article 8 of the European Convention on Human Rights.

16. The principle of family reunification on the basis of international conventions or bilateral labour conventions entered into in the past is observed in Greece.

17. Those admitted into Greece for family reunification are permitted to work insofar as the legal conditions are observed. No period of residence is required before such permission is given.

18. Apart from the above replies, no other conditions for family reunification are relevant in this regard.

19. We would not object to discussions on this topic to ascertain whether there is a need for further harmonization of the policies and procedures of the Member States in this area.

---

1. Notion of "expectation of permanent or long-term residence"

1(a) No category of aliens is defined by Spanish law as covering aliens having an expectation of permanent or long-term residence. However, only third-country nationals who have renewed their residence permits at least once may ask for members of their families to be reunited with them.

1(b) As a general rule, admission of family members at the same time as the principal subject is not allowed although this may in practice occur in certain cases.

1(c) The person with whom family members are to be reunited must have renewed his/her residence permit at least once as it is necessary to have resided in Spain for a minimum of one year in order to request family reunification.

1(d) Renewal of the residence permit is required in the case of nationals of countries which are signatories to the European Social Charter, with the exception of nationals of Liechtenstein, Iceland and Norway, as these are parties to the European Economic Area.

1(e) In all categories.

1(f) Members of the families of third-country residents may apply from the country in which they reside for reunification with an alien who has renewed a residence permit for Spain at least once, provided that the other legal requirements are met.

2. Persons entitled

There is no right to family reunification under Spanish legislation.

The following family members may obtain a residence permit for the purpose of family reunification:

A. The spouse, provided that he/she is not separated de facto or de jure, that another spouse is not residing with the alien and that the marriage was not concluded illegally.

B. Any children who, at the time of the application, are minors and unmarried, have not formed an independent family unit and are not leading independent lives. In the case of adopted children, it will be necessary to show that the decision to allow adoption was taken by the competent administrative or judicial authority in the country in which the child was adopted and that such a decision was of a nature to be applicable in Spain.

C. Disabled persons and minors who have the resident alien as their legal representative.

D. The resident alien's family members in the ascending line where these are economically dependent on him/her and if there are reasons indicating a need to authorize their residence in Spain.

3. Refugees

3(a) There have been no changes.

3(b) In the case of persons who have been denied refugee status but where circumstances of a humanitarian nature justify the authorizing of residence in Spain, the Resolution is regarded as applicable.

4. Spouses: polygamous marriages (and relationships)

4(a) There are no specific laws governing polygamous marriages and/or polygamous relationships.

4(b) Yes.

4(c) Family reunification with a spouse is not possible if the person is already living with another spouse in Spain.

4(d) A second spouse is refused entry if the person with whom he/she is to be reunited is legally married to a spouse already resident in Spain, whether or not the latter has obtained an independent residence permit.

4(e) The spouse may be refused entry but not the children if they fulfil the relevant requirements.

5. Unmarried partners

There is no allowance for reunification with unmarried partners. Reunification is only possible for a legal spouse who is not separated de facto or de jure.

6. Admission of children

(a) No use has been made of the provision in the Resolution, since only the children (adopted or not) of the person with whom they are to be reunited may be admitted and not children who are only the offspring of his/her spouse.

(b) No.

7. Upper age-limit for children joining their parents

(a) Only those children may join their parents who, at the time of the application, are less than eighteen years of age and unmarried, have not formed an independent family unit and are not leading independent lives. In the case of adopted children, it will be necessary to show that the decision to allow adoption was taken by the competent administrative or judicial authority in the country in which the child was adopted and that such a decision was of a nature to be applicable in Spain.

The eighteen-year age limit corresponds to the age of majority laid down by the Spanish Constitution.

(b) No.

8. Independent residence status for family members

(a) They can obtain independent residence status.

The spouse can obtain an independent residence permit when he/she:

- obtains a work permit
- provides proof of having lived in Spain with his/her spouse for at least two years. That period may be reduced where this is justified by family circumstances
- the person whom he/she is to join has died as a legal resident in Spain.

The children of the person to be joined are given independent residence permits when they reach the age of majority.

(b) A residence permit obtained by a spouse only gives the right to work if a work permit has been obtained beforehand. In other cases where an independent permit may be obtained, this is given solely for residence without prejudice to the fact that a subsequent work and residence permit may be obtained if the relevant general requirements are fulfilled.

(c) It is possible to obtain an independent residence permit even though the family relationship still subsists.

(d) If a spouse who has joined a husband/wife wishes to obtain an independent residence permit, they will have to show that they have lived in Spain with their spouse for at least two years. That period may be reduced where this is justified by family circumstances.

9. General conditions for family reunification

(a) There are no objective criteria that are equally applicable in all cases. Each case is assessed independently.

(b) There is no rule. In practice, it is usual to expect the person to have resources equivalent to the minimum interprofessional salary.

(c) An authorization to stay on the basis of family reunification can be withdrawn if, when the persons concerned wish to renew it, the conditions on which it was originally granted no longer obtain. It is also possible to revoke the permit during its period of validity on the basis of a reasoned decision by the governmental authority if the conditions on which it was granted no longer obtain.

10. Identification of family members

(a) Examination of the legal documents proving kinship.

(b) The burden of proof lies with the family member.

(c) Yes.

(d) Spain does not use the methods indicated.

(e) Steps are taken to check the authenticity of civil-status documents produced in support of an application. For the practice of registration without an inquiry on the basis of an Aliens Register Certificate, the latter must be properly drawn up and authentic so that the entry provides guarantees similar to those required for registration under Spanish law.

Legal means can be used to fill in any data and background which are not clear from the Aliens Certificate and, finally, inclusion in the Spanish Register is permitted provided that there is sufficient justification, even where the person has not been included in the Aliens Register.

11. Admission of parents

Family members in the ascending line may be reunified with the resident alien where they are economically dependent on him/her and if there are reasons making it necessary to authorize their residence in Spain.

The general reunification requirements for family members in the ascending line are the same as for other people joining an alien (they must have suitable accommodation, sufficient economic resources and a welfare guarantee).

12. Family reunification with students

Members of the family of third-country students are not admitted for family reunification.

13. Family reunification quotas

(a) No quotas or time-scales are applied.

(b) No limit is set on the total number of family members provided that they fall within the authorized categories and comply with the necessary provisions.

14. Requirements of constitutional law

The Spanish Constitution does not set any conditions regarding legislation on family reunification.

15. Article 8 of the European Convention on Human Rights

When the requirements for family reunification are checked, there is no investigation into the private lives of persons since the administrative procedure is based on information voluntarily provided by the person concerned.

16. International Conventions

No.

17. Ability to take employment

The spouse and children of an alien worker legally resident in Spain who have obtained residence permits for the purpose of family reunification are given preference when an initial permit is granted for self-employment or employment regardless of the national employment situation or its effect on the labour market.

Other family members of an alien worker (in the ascending line, dependent minors or disabled persons) will be given some preference in the granting of work permits.

Family members who have been reunited are not required to complete a particular period of residence in Spain in order to obtain work permits.

18. Other conditions

Spanish law does not apply any condition to family reunification other than those laid down in the Resolution.

19. Scope for further work

It is felt that further work can be done on family reunification in order to achieve greater harmonization of the relevant policies of the Member States.

---

1. (a) An individual applying for family reunification must meet the following conditions:

Luxembourg law has no list of categories of third-country nationals; the above two conditions apply to all.

- hold at least a B work permit (valid for 4 years and for a single occupation but for any employer);
- have adequate accommodation.

(b) The applicant can make an application for family reunification as soon as the conditions at (a) are met.

(c) The law makes no provision for a minimum residence period.

(d) /

(e) In principle, the individuals for whom family reunification is applied for must be outwith the country.

(f) No provision is made for this in the law. Cases are treated on their own merits.

2. It should be noted that there is no "right" to family reunification.

In practice, the person already resident in Luxembourg makes the application. However, there is nothing to stop an alien not resident in Luxembourg from making an application. In that case it is the person resident in Luxembourg who has to meet the conditions at 1..

3. (a) Anyone who has ben granted political refugee status is entitled to family reunification provided he has accommodation which is not provided by the Luxembourg State.

(b) There is no provision under Luxembourg law in this respect. In practice, the persons concerned were not entitled to family reunification.

4. (a)-(e) Luxembourg law contains no provisions on polygamous marriage.

5. Fiancé(e)s are given a six-month residence permit to allow them to marry. They must first provide a bank guarantee. No provision is made in law for same-sex relations.

6. There is no provision for this in the law.

7. (a) The maximum age limit is 18.

Where the child is over 18, the parent must show that he has been supporting him regularly for at least two years before the application was made. Evidence of suitable accommodation is also required. Finally, the child must prove that he himself is not supporting anyone in his country of origin and that there are no other family members in his country of origin who could support him.

(b)-(d) /

8. (a) There is no provision in Luxembourg law for independent residence status. In practice, this right is subject to a material condition, namely that the person concerned has adequate independent means to allow him to remain in the country.

(b) /

9. (a) The concept of "adequate accommodation" is interpreted on a case-by-case basis before any agreement is reached. There are no rules for its interpretation.

(b) Proof of "sufficient resources" is adduced by the fact that the applicant holds a work permit.

(c) Anyone who can no longer show that he has sufficient personal resources can be expelled.

10. (a) /

(b) It is for the applicant to produce evidence of the identity of members of his family.

(c) Yes.

(d) /

(e) /

11. (a) For relatives in the ascending line and dependent children past the age of majority, proof is required that the applicant actually supports them. The applicant must produce documentary evidence that he has regularly been supporting relatives in the ascending line or children past their majority for a period of at least two years before the application was made. The applicant must prove that he has adequate accommodation to house these persons. Finally, he must prove that the person on whose behalf family reunification is being applied for does not himself have dependents in the country of origin and has no other family members in the country of origin who could support him.

12. No.

13. (a) Beneficiaries may enter Luxembourg immediately.

(b) No.

14. No.

15. /

16. Luxembourg has concluded no labour conventions valid today.

17. Since beneficiaries are holders of residence permits, they have access to the labour market. It is for the Ministry of Labour to examine in each individual case whether a work permit should be granted.

18. /

19. /

General remark: The Netherlands makes a distinction in admission policy between family reunification and family formation. Family reunification is residence on the basis of a marriage already existing when both spouses were still abroad.

Family formation is residence on the basis of a marriage contracted at a time when one of the spouses was already in the Netherlands.

1. **The concept of "circumstances giving rise to expectation of permanent or long-term residence"**

(a) Categories of third country nationals falling within this definition:
- holders of an indefinite residence permit (under Article 10 of the Aliens Law)
- admitted refugees (under Article 10 of the Aliens Law)
- holders of a fixed-term residence permit for a non-temporary purpose (under Article 9 of the Aliens Law). Temporary purposes are: au pair work; medical treatment; certain types of work (for less than one year); a period of service as an imam.

In addition, the Netherlands recognizes a group of aliens who are granted right of residence for an indeterminate period under Article 10 of the Aliens Law. This special status is granted as of right to the spouses and under-age children of Netherlands nationals, holders of a residence permit and admitted refugees, after they have been one year in the Netherlands. This status is lost automatically when a child reaches its majority and if the family tie between parent and child or between spouses is de facto broken. This special status was abolished at the beginning of 1994. It has thus not been granted since then. Those who already possessed this status have retained it. In view of the nature of the right of residence, this falls within the terms of the Resolution.

(b) Initially, admission is possibly directly with the principal subject, where conditions are fulfilled.
Holders of indefinite residence permits receive them only after holding a fixed-term permit for a minimum of five years. As holders of fixed-term permits they can also apply for family reunification (i.e. they need not wait five years).

(c) No (subject to the waiting period referred to at (d)).

(d) In the Netherlands the waiting period applies only to those known as "secondary" migrants, namely third country nationals born in the Netherlands or who have entered the Netherlands and have residence under Article 9 or 10 of the Aliens Law. If they wish to be joined by a spouse/unmarried partner (classed in the Netherlands as family formation), a waiting period of three years applies.

(e) The overall rule is that the application for family reunification must be made while the family members are still resident abroad. Due to the lack of a satisfactory legal basis in the Aliens Law, this is not laid down as compulsory. Family members may therefore now travel to the Netherlands to lodge an application to reside with a family member. Legislation is being prepared to make it a compulsory condition that an application for temporary residence (= a visa for a long-term stay) must be lodged abroad. This would mean that if this condition is not complied with and a family member travels to the Netherlands to lodge an application there, the application will not be accepted for processing.

There will be a limited number of exemptions from this long-stay visa requirement: one of these would be for family members of admitted refugees. Such people may also lodge an application in the Netherlands.

(f) See reply to question (g).

2. Persons entitled

An application for a residence permit in connection with family reunification (in the Netherlands also family formation) must be lodged by the family member residing abroad.
Subsequently, a third country national (or a national of the Netherlands, which the scope of the resolution also covers) may officially apply to the Aliens Office as a "referee" to give a ruling on the possibility of residence for a family member in the Netherlands. If the Aliens Office gives a positive ruling, this is forwarded via the Immigration and Naturalization Service to the consular office abroad. Permission to travel to the Netherlands can only be given where the persons concerned have made an application and their particulars have been verified.
A negative decision is always addressed to the applicant. The referee receives a copy of the decision as does the representative in the Netherlands of the person concerned, e.g. a lawyer.

3. Refugees

(a) Yes. A spouse and under-age children (who actually belong to the family) of a refugee admitted to the Netherlands may be considered for refugee status (by association) where they:

- have the same nationality as the refugee and have lodged an application for admission at the same time as the refugee;

- have the same nationality as the refugee and have followed the refugee in travelling to the Netherlands within a reasonable time (initially 6 months).

In the case of polygamous marriages, only one spouse and the children born to her may be admitted (see 4).

For the admission of other family members (other than spouses and under-age children as referred to above) and for a spouse/unmarried partner and/or under-age children wishing to reside in the Netherlands in connection with family formation, it is laid down that they are not accorded refugee status. Subject to certain conditions, such family members are eligible for a fixed-term residence permit. These conditions are the same as those laid down for a holder of an indefinite residence permit.

(b) No, aliens enjoying temporary protection do not have the right to family reunification (or family formation). Only if their temporary protection (a conditional fixed-term residence permit) is transmuted into an unlimited indefinite residence permit (a residence permit on grounds of pressing humanitarian reasons) can they bring their family members in, subject to certain conditions.

4. Spouses

(a) There is no specific legislation governing admission of persons with a polygamous marriage or relationship. The rules for admission governing polygamous marriages are based on the general provision in Article 15 of the Aliens Law, to the effect that

admission may be refused for reasons of national interest/public order, and have been worked out in more detail in accompanying rules laid down in the Aliens Circular 1994.

(b) Yes.

(c) Yes.

(d) Yes; in any case relating to a state of polygamy only one woman and the under-age children born to her are admitted to the Netherlands. As regards any other woman with whom the principal subject has had a polygamous relationship at any time and the children born to her, it is laid down that they cannot be eligible for admission, even if at the time of their arrival in the Netherlands only one marriage is mentioned.

(e) Yes; where the principal subject residing in the Netherlands cohabits with a different man or woman, residence is not granted to the legal spouse or other possible family members.

5. Netherlands policy provides for family reunification or family formation with unmarried partners

To be eligible for a fixed-term residence permit an individual must be the (unmarried) partner of:

1. A Netherlands national (outside the scope of the Resolution);
2. An alien who has been admitted under Article 9 or 10 of the Aliens Law (in possession of an indefinite residence permit or a fixed-term residence permit);
3. A national of an EU Member State who is residing in the Netherlands under Community law (this lies outside the scope of the Resolution).

The partners must not necessarily be married. The fact of being unmarried must be demonstrated by certified official documents (the requirement for certification and verification of documentary evidence relating to marital status). An exception to the principle of being unmarried is possible where it is established that one of the partners is not yet divorced as a result of legal obstacles over which he has no control.

For admission, the fact that the individuals are of the same sex or are engaged is not relevant. The only condition laid down is that the partners must not be married and that they are not related to each other by blood or by marriage in the first or second degree.

In admission of unmarried partners, just as in admission of married partners, a distinction is made between family reunification and family formation. Family reunification refers to residence on the basis of a relationship which already existed when both partners were still outside the Netherlands.

Family formation relates to residence on the basis of a relationship begun at a time when one of the partners was already resident in the Netherlands.

With regard to family formation, the waiting period applies as stated in answer to question 1(d): an alien who has himself or herself been admitted under the family reunification rules must have had residence under Article 9 or 10 of the Aliens Law for at least three years before the partner can be admitted. Where the principal subject has not completed the three-year waiting period, the application may not be allowed for that reason.

There is also an age requirement for family formation: admission is only possible where both partners are 18 years of age or older.

There are a number of general requirements for admission of an unmarried partner:
- a permanent relationship;
- single status;
- sufficient means of support;
- adequate housing;
- no threat to peace and public order or national security.

The partners must actually live together and must be recorded in the population register at the same address. Furthermore, the partners must have a joint household, which may for example be shown by a notarized contract of cohabitation. The same single address must also be provided where required to external agencies, for example to employers, the taxation department and the sickness insurance fund.

Aliens applying for residence from abroad must come to take up residence with their partners immediately after being admitted into the Netherlands.

An alien once admitted receives a fixed-term residence permit with the restriction "residence with the named partner". The permit is valid for one year and can be withdrawn or renewal refused if the relationship has effectively ended or where the other conditions are not met.

The Netherlands is familiar with the problem of pretended relationships: this in practice means giving the impression that a relationship has been started or exists in order to obtain residence for an alien in the Netherlands without any intention by the partners of living together. In such cases a residence permit may be refused where it is assumed that the relationship is pretended, for example:
- as a result of statements by the partners in question, together or separately, revealing the intention to pretend a relationship, or in which inconsistencies may be found leading to that conclusion;
- from trustworthy statements by third parties;
- where it can be shown that the persons in question do not in fact have a joint household, as established in a recorded statement.

6. Admission of children

(a) Yes; under the Netherlands rules admission can also be granted to under-age children who are not under-age offspring of the marriage or the relationship (for example children from a previous relationship of one of the two spouses or foster-children) but are de facto part of the family.

The most important criterion is accordingly that the child must form a de facto part of the family of the principal subject in the Netherlands. Parental custody or guardianship are important in this context but are not determining factors by definition.

A child no longer forms a de facto part of the family in the following cases:
1. The child has been permanently taken into another family:
2. The person with whom residence is proposed no longer has custody or no longer provides for educational and maintenance costs;
3. The child now lives independently and provides for himself/herself;

4. The child has formed an independent family by entering into a marriage or relationship;
5. The child has responsibility for the care of children born out of wedlock.

(b) It makes no difference whether one of the parents has sole custody of the child or whether custody is shared by parents who are not married to each other, do not live together or are divorced. The deciding factor is whether the child applying for residence is the offspring of the person with whom residence is requested and also actually forms part of the family of that principal subject.

7. Upper age limit for children joining their parents

(a) The upper age limit is that of the age of minority. Minority is determined according to the law of the Netherlands. Minors are children who have not yet reached the age of 18, are not married and have never been married.

Other conditions are:
- children must actually form part of the family;
- the parent(s) must have sufficient means of support;
- the child must not represent any threat to public order.

For admission of children who have attained majority, separate admission rules apply. In the Netherlands, the admission of children over the age of majority comes under the "extended family reunification policy" (see reply to question 11).

(b) No; no other rules have been introduced. In early 1994, a special rule was introduced into Netherlands legislation but was abolished before being applied. It concerned the "reverse waiting period". On the basis of this rule it was only possible for parents to regularize residence for their children within three years of complying with the conditions.

This rule was not applied because too many problems were anticipated in its implementation. For example, the implementing offices had to decide on the basis of the available information concerning the past whether or not an individual satisfied the conditions at any given moment.

There was also a possibility of making an exception for children under 12. On urgent humanitarian grounds admission of such children would also be possible even after the three-year period. In this connection problems might also be anticipated with Article 8 of the European Convention on Human Rights; merely the fact of exceeding a three-year limit might not be insufficient for refusal of children with whom a family tie exists within the meaning of Article 8 of the ECHR.

8. Independent residence status for family members

(a) Yes. Family members may, under certain conditions, be eligible for independent residence status:

- after five years of legal residence, a spouse or unmarried partner may be eligible for an indefinite residence permit, i.e. a right of residence for an indeterminate period;

- after three years of marriage a spouse may be eligible for independent residence status, provided that the spouse in question has lived legally in the Netherlands for one year on the basis of the marriage;

- after three years of an unmarried relationship a partner may be eligible for independent residence status provided that the unmarried partner has lived legally in the Netherlands for three years on the basis of the relationship;

- children who were born in the Netherlands or were admitted to the Netherlands on the basis of family reunification may also be eligible after five years of residence for an indefinite residence permit.

With regard to the issue of a fixed-term residence permit, the following distinction is observed:

Children born in the Netherlands of parents with legal permanent residence have the right to continued residence after break-up of the family relationship (residence permit without restriction).
Children with a parent who is a Netherlands national have the right to continued residence after break-up of the family relationship (residence permit without restriction).
Children admitted to the Netherlands on the basis of family reunification are eligible after break-up of the family relationship for a residence permit without restriction if they have lived for a minimum of one year in the Netherlands.

(b) Yes. Independent residence status confers the right to work.
With an indefinite residence permit the foreign national has permission to work without the employer being required to have an employment permit.
Independent residence status after the break-up of the marriage or relationship as referred to at (a) also confers the right to work. From the time of break-up of the relationship a foreign national is allowed one year of residence subject to "having independent or paid employment". Work is unrestricted, in that the employer is not required to have an employment permit. During that year the foreign national is intended to seek work from which he will be able to provide for his own maintenance. The year is for this reason also commonly called the "job-seeking year". In the event of an application for extension of the period of validity of the residence permit issued, it is necessary to verify whether or not the foreign national has been employed for at least one year. For this purpose he may be employed or may work independently, as long as he earns the minimum subsistence amount as laid down by the General Assistance Law according to the norm for the appropriate category (single person or one-parent family).

Where the foreign national has not been employed for at least one year by the benchmark date, extended residence is refused.

Where the foreign national has accepted an employment contract for at least one year, he is eligible for extended residence. The period of validity of the residence permit is then extended beyond the job-seeking year for the remaining period of the employment contract. After expiry of the employment contract the foreign national must however again have work for at least one year.

(c) Independent residence status can also be obtained where the (marriage) relationship still subsists.

(d) The following special rules apply to spouses or unmarried partners in a vulnerable situation:

- admission on pressing humanitarian grounds is possible even where the generally applicable rules for independent residence status (see 8(a)) are not complied with. Cases of distress are eligible immediately after the break-up of the relationship for independently continued residence on pressing humanitarian grounds. An example might be a foreign national having close ties with the Netherlands or a person living in the Netherlands, or with a foreign national whose return to the country of origin cannot reasonably be postponed.

In the case of abandoned women the balance of interests will be weighed up, in which a combination of the following will be key factors:
- the situation of single women in the country of origin;
- the social position of the person concerned in the country of origin;
- whether or not the country of origin can provide assistance on arrival which may be considered acceptable by that country's standards;
- the responsibility of the person concerned for caring for children born and/or at school in the Netherlands (this refers to older children);
- demonstrated (sexual) violence within the relationship which has led to its break-up (this may for example be evidenced by written statements, medical reports, statements by reception centres, etc.).

In general it may be said that the longer the person concerned has stayed in the Netherlands, the more likely it is that extended residence on pressing humanitarian grounds requires to be granted. The mere fact that a foreign national is responsible for the care of under-age children does not in itself lead to granting residence.

9. General conditions for family reunification

(a) adequate accommodation:

The person with whom admission is sought as a family member must have adequate accommodation permanently available to him or her. This requirement is satisfied where the responsible local housing authorities establish that the accommodation is satisfactory for families who are Netherlands nationals in comparable circumstances. The commune can give counselling on this in individual cases. In addition, the housing must also be actually available. There must therefore be no obstacle to residence or occupation by the partner to be admitted.

The lack of adequate accommodation cannot be considered an objection in the case of:
1. A Netherlands national (outside the scope of the Resolution);
2. A foreign national admitted as a refugee (outside the scope of the Resolution).

The requirement for adequate accommodation therefore applies to holders of a fixed-term residence permit and holders of an indefinite residence permit.

(b) sufficient resources for subsistence:
This requirement is applied in a highly differentiated manner under the law of the Netherlands.

The *principle* is that the person with whom admission is sought as a family member must *permanently* and independently have *sufficient* means of subsistence. The rationale of this requirement is to prevent the need for a (supplementary) maintenance benefit payment after admission of the family member concerned, or for some other benefit financed from public funds.

Sufficient resources for subsistence means a net income which is at least equivalent to the minimum subsistence amount for a family under the terms of the General Assistance Law (Algemene Bijstandswet – ABW).

Resources for subsistence are considered to be *permanent* where they are available for a period of at least one year. Even the independently employed are subject to the rule that the permanence of sufficient resources must be demonstrable. This may be seen from a balance, a profit and loss account and monthly returns of business accounts.

Where a trial period has been served under an employment contract with a duration of at least one year, the contract can only be considered permanent if the trial period is served successfully, in which case the trial period is not taken to reduce the period of the contract.

Exception to the concept of permanence

As part of efforts to make the labour market more flexible, increasing use is being made by employers of short-term employment contracts. As a result it is becoming increasingly difficult to negotiate an employment contract for a minimum period of one year. In our policy therefore an accommodation with this development is aimed at. However, the principle remains that of demonstrating the permanence of the means of subsistence. If the person with whom it is intended to seek residence does not have a contract of employment for a minimum of one year, it is ascertained on the basis of his employment history whether or not the permanence of his income is guaranteed for the future. Income from work on the basis of an employment contract (including agency work) for a period shorter than one year may be considered permanent, as an exception to the general rule, if at the time of the enquiry:

- the person with whom it is intended to seek residence has already worked uninterruptedly for three years (whether or not on the basis of fixed-term contracts), and has earned over the whole period an income which is at least equivalent to the appropriate minimum subsistence amount within the meaning of the General Assistance Law; and
- this income from employment will be available for a minimum of a further six months.

Short periods of unemployment, during which unemployment benefit is received under the Unemployment Law, is counted over the three-year period as income from work. During the three-year period, the total of such periods of unemployment must not amount to more than 26 weeks. The rationale of this requirement is that short-term unemployment caused by moving from one job to another is not held against the person concerned in all cases.

Income is taken to be:

- an income from work as an employee or work as a self-employed person;

- a benefit payment replacing income, for which contributions are deducted. A benefit for which no contribution is deducted such as the ABW, is not considered sufficient means of subsistence within the meaning of the Aliens Law; an income resulting from the Sickness Insurance Law is permanent where the person concerned has an employment contract for an indeterminate period;
- an income from work under the Law on Social Labour Provision;
- an income from capital: such income is sufficient where the annual income from interest on capital is at least equivalent to the gross maintenance standards currently applying, taken annually:
  Such income from capital is only permanent where, at the time of making enquiries, in addition to being available for a period of at least one year, it has already been available for a period of at least one year. This must be demonstrated by the relevant declaration made to the Inspector of Taxes. The person concerned must submit this declaration when making the application.

As exceptions to the abovementioned means requirement, different standards apply to:
1. A Netherlands national (outside the scope of the Resolution);
2. A foreign national admitted as a refugee (outside the scope of the Resolution);
3. Holders of an indefinite residence permit.

For these categories 1, 2 and 3, *income* may also be income earned from employment within a labour market activation scheme from which remuneration is obtained.

In addition, the following distinction is made with respect to these categories 1, 2 and 3:

- persons aged 18 to 23: for such persons, a sufficient income is an independently earned income from employment of at least 32 hours per week, irrespective of the amount of income.
  Where the person concerned works for less than 32 hours per week and thereby obtains at least 70% of the net standard amount for married couples/families within the terms of the General Assistance Law, family reunification or family formation is also possible.
  Such means of subsistence, in accordance with the main principle, are considered to be *permanent* where they are available for a period of at least one year.

- persons aged 23 or older: for such persons, a sufficient income is:

(a) an independently earned income from an employment relationship yielding at least 70% of the net standard amount for married couples/families within the meaning of the General Assistance Law;
(b) a benefit payment under the Unemployment Law yielding at least 70% of the net standard amount for married couples/families within the meaning of the General Assistance Law.

In addition, categories 1, 2 and 3 are exempt from the requirement of sufficient means of subsistence with respect to:

(a) individuals of 57,5 years of age or older;
(b) single-parent families with a child or children younger than 5 years old, if the single parent alone is responsible for care of the child. However, the child must reside in the Netherlands either under Article 9 or 10 of the Aliens Law or by virtue of having Netherlands nationality and must be a de facto member of the family. An individual is considered in principle to have sole responsibility for care of a child

also where the foreign spouse(s) have lodged an initial application for admission into the Netherlands and are residing in the Netherlands pending a decision on the application;

(c) individuals with a permanent total disability.

Netherlands legislation also lays down a special provision for the long-term unemployed: for long-term unemployed persons in receipt of benefit under the General Assistance Law, family reunification or family formation may in fact be possible where it can be established that a long-term unemployed person, despite genuine efforts, has no prospect of finding work from which to provide independently for his own maintenance even though he has in the past contributed over a long period to working life.

In the case of the long-term unemployed, enquiries are made regarding:
- length of residence in the Netherlands;
- duration of unemployment (minimum of three years);
- length of working period and nature of work in the past;
- genuine efforts to provide independently for own maintenance;
- prospects of a job;
- age;
- medical aspects.

(c) Yes, as a rule it can. However, an assessment will still have to be made as to whether this is justified in an individual case. Reference to Article 8 of the ECHR is a major factor in the Netherlands – see under 15.

10. Identification of family members

(a) The family member must demonstrate his identity and his relationship with the family member in the Netherlands by submitting documentation. Foreign documents concerning the civil status of an individual (for example a birth certificate) must be legalized and/or verified. Where no document is available for identification purposes, identity is established by comparison of photographs or by identifying questions.

(b) The burden of proof lies primarily with the family member.

(c) Yes.

(d) No. In the Netherlands no blood tests are made use of by government authorities. A foreign national is always at liberty to take a blood test or DNA test independently in order to prove that he or she is a member of the family of a person in the Netherlands.

(e) Yes, checks are made by means of certification or verification of documents concerning the civil status of individuals.

For certification of foreign documents, the foreign national must apply in person or through family members or acquaintances to the competent authorities in the country of origin. In most cases this will be the Ministry of Foreign Affairs of the country of origin. The document must then be certified by the Netherlands diplomatic or consular representation for that country. Where there are particular indications that the content of the (certified) document is inaccurate and it is established that the other conditions for admission are fulfilled, the Ministry of Foreign Affairs may be asked to begin verification investigations.

In 1996, the Minister for Foreign Affairs in the Netherlands listed five countries as "problem countries". They are India, Pakistan, Ghana, Nigeria and the Dominican Republic. The content of documents from these countries must always be verified.

The certification and verification requirement does not apply to:
- foreign nationals who have been admitted as refugees,
- foreign nationals holding a fixed-term residence permit who have been exempted from the passport requirement, or
- nationals of countries with which agreements on waiving or abolition of verification have been concluded,

who object to certification, unless they have submitted recently issued documents. In such cases the person concerned has evidently had recent contact with his or her authorities and certification can be requested.

Verification is also made that the identity document (e.g. passport) is not false or forged.

11. Admission of parents

Admission of parents is possible in the Netherlands as follows:
(a) on the basis of extended family reunification,
(b) on the basis of policy on treatment of the elderly.

Note re (a) extended family reunification
Those eligible for what is known as extended family reunification are family members who are de facto part of the family, insofar as to leave them behind in the country of origin would involve disproportionate hardship.

To be eligible, the family members must be de facto part of the family of the person with whom residence in the Netherlands is sought. The family connection must already have existed in the foreign country. The family members admitted must in principle take up residence with the person with whom residence has been granted. There must also be moral and financial dependence on the person with whom residence is sought, and such dependence must already have existed in the foreign country. The existence of a legal family relationship must be demonstrated by means of certified official documents (the requirement for certification and verification of documentary evidence concerning status of persons).

The family connection is considered to have ended definitively in the following cases:
1. Involvement with another family over a long period and the person with whom residence is sought no longer has custody or no longer provides for the cost of education and care;
2. Separate residence and self-sufficiency in maintenance;
3. Formation of a separate family as a result of entering into marriage or a relationship;
4. Responsibility for children born out of wedlock.

For admission under extended family reunification, the general admission conditions already set out here above also apply:
- sufficient means of subsistence
- adequate accommodation
- no threat to public peace, public order or national security (see 18).

Note re (b) admission of foreign nationals aged 65 or older

The following general requirements apply to the admission of foreign nationals aged 65 or older:
- The foreign national concerned must live as a single person in the country of origin; this must be demonstrated by certified official documents (requirement for certification and identification of documentary evidence concerning status of persons);
- (Almost) all the offspring of the foreign national in question must live in the Netherlands. Where one or more of the offspring live in the country of origin and may be presumed to take responsibility for care of the person concerned, admission under this policy is not possible;
- Each of the offspring resident in the Netherlands must hold an indefinite residence permit or hold a fixed-term residence permit by virtue of entitlement to right of asylum, have been admitted as a refugee or have Netherlands nationality;
- One or more of the offspring must have sufficient means of subsistence permanently available in order to contribute to the cost of maintenance of the foreign national concerned. The standard for sufficient means of subsistence is the standard amount of assistance benefit for a single person added to the standard amount applying to the person with whom residence is intended;
- There must be adequate accommodation for the foreign national concerned;
- The foreign national concerned must not represent a threat to public order.

12. Family reunification with students

Yes. The spouse or partner and under-age children of the person concerned who are de facto members of his or her family are eligible for admission. The conditions laid down for admission are as follows:
- The student must have sufficient means of subsistence permanently available;
- The student must have adequate accommodation permanently available;
- The family member must not constitute a danger to public peace, public order or national security;
- The spouse or partner must actually cohabit with the person concerned and constitute a joint household.

A foreign student in the Netherlands holds a fixed-term residence permit with the restriction "admitted as a student". This means that the student must satisfy the means requirement applying to holders of a fixed-term residence permit (see 9(b)). Accordingly the student must have an income of at least the level of the assistance benefit payment for family. No special provisions or dispensations apply to this case.

Family members have a right of residence which is wholly dependent on the student. Their period of residence is also temporary and is exclusively for the duration of the study period. The family members must sign a statement to the effect that this is clear to them. The members of a student's family are not allowed to work.

13. Family reunification quota

(a) No quota or time-scale is applied in the Netherlands.

(b) The Netherlands does not limit the total number of family members who may join a particular person.

14. Requirements of constitutional law

No.

15. Article 8 of the ECHR

Yes. In each individual decision concerning admission on the basis of family reunification or family formation (including extended family reunification), reference is made to obligations under Article 8 of the ECHR. When replying to the question of whether a decision to admit a person is in accordance with Art. 8 ECHR, the following questions are relevant in view of the case law of the European Court of Human Rights:

(a) Does the case concern private or family life within the meaning of Art. 8 ECHR?
(b) Would denial of residence authorization to the alien constitute interference with the right to respect for private and family life?
(c) Would such interference be justified under Art. 8(2) ECHR?

The Netherlands applies the following reasoning here:
Where an alien did not previously hold a residence permit under the Netherlands Aliens Law which enabled him to have a "private or family life" in the Netherlands, rejection of the family member's request should in principle not constitute interference with the right to respect for the private and family life of the person concerned. In that case, such persons may generally be assumed to continue their private or family life in the same way as before submission of the request for permission to reside in the Netherlands.

However, it must then be considered whether the Netherlands State is under a positive obligation to accede to the request to grant the alien a *vergunning tot verblijf* (fixed-term residence permit) in order to enable him to have a private or family life in the Netherlands.

In principle, no positive obligation exists in first-admission cases. The factors relevant here will mostly have received earlier consideration when testing for pressing humanitarian grounds, such as:
- age;
- situation in the country of origin;
- dependency upon relatives in the Netherlands and Netherlands nationality as held by family members.

16. International conventions
In highly exceptional circumstances some Surinamese nationals may still qualify for certain rights under the 1975 Agreement with Surinam and benefit from less restrictive family reunification conditions.

17. Ability to take employment
The main rule in the Netherlands is that family members have the same rights as the principal subject in the Netherlands regards ability to take employment.

Accordingly, family members of Netherlands nationals, holders of a *vergunning tot vestiging* (indefinite residence permit), admitted refugees and holders of a *vergunning tot verblijf zonder beperking* (fixed-term residence permit without restriction) have free access to the Netherlands labour market.

Family members of other aliens (who hold a *vergunning tot verblijf voor een bepaald doel* (fixed-term residence permit for a specific purpose)) may in principle work in the Netherlands only for an employer holding an employment permit. Such a permit is normally issued only if there are no job-seekers in the Netherlands who enjoy priority.
Family members do not have to complete a period of residence in order to be permitted to work.

18. Other conditions

– Aliens must not pose a threat to civic peace, public order or national security.

Any non-suspended prison sentence or custodial measure imposed following a criminal offence may constitute a ground for refusing first admission. The same applies in the case of a sentence or measure which has not yet become final.

Where an alien is being suspected of, or prosecuted for, a crime for which he/she may be punished with a custodial sentence or measure the decision on the application for a fixed-term residence permit will be deferred. Sentences incurred abroad are also taken into account. Even if they satisfy all the conditions, undesirable aliens will not qualify for a fixed-term residence permit. Family members aged 18 or more are required to sign a declaration that they have no criminal record.

– In principle, the fixed-term residence permit is subject to the following rules:

(a) (adequate) health insurance cover must be sought, unless the person concerned already has compulsory cover under the *Ziekenfondswet* (Compulsory Health Insurance Law);

(b) aliens must undergo a tuberculosis test. An alien may be refused admission to the Netherlands if he does not cooperate with the tuberculosis test or is unwilling to allow himself to be treated for tuberculosis. The tuberculosis test is not compulsory for EU/EEA nationals or nationals of Australia, Canada, Israel, Japan, Monaco, New Zealand, Norway, Surinam, the United States of America, Iceland and Switzerland.

19. Harmonization

It is desirable that the debate on (harmonization) of family reunification policy be continued following analysis of the replies to this questionnaire. The Netherlands favours harmonisation.

Re 1

(a) Residence permits without limit in time are granted to spouses and underage children of aliens who have been established uninterruptedly in the Federal Republic for a period of five years and have a regular income from authorized activity, provided they cohabit with this alien and have had their main residence in the Federal Republic for two years. Such persons may already receive an initial residence permit for a five-year period.
After two years of marriage and communal living in the Federal Republic and provided they are still married, spouses of Austrian citizens receive an unlimited residence permit as do any underage children of the Austrian citizen living in the same household.
Relatives of EEA citizens (spouses, relatives in the descending line up to the age of 21 and older if responsibility for their maintenance continues), relatives and relatives in the ascending line of the spouse where there is responsibility for their maintenance receive an initial residence permit for 5 years.

(b) Where all legal parameters are fulfilled (for instance where places are available under the quota) the family can in principle be admitted at the same time as the principal subject.

(c) A minimum period of lawful residence does not constitute a criterion for family reunification as such, but it is a precondition for long-term or permanent (see (a)) residence.

(d) see (c).

(e) An application must be made for family reunification in every case, even where – as for instance in the case of relatives of Austrian and EEA citizens – a legal claim to a residence permit exists.

(f) Relatives of EEA citizens where they are entitled in their own right to entry without a visa (see (a)) and relatives of Austrian citizens who are legally resident.

Re 2.

Those entitled to make the application are the family members themselves or their authorized representatives; underage children who are 14 or over also have a right to make the application.

Acceptance/rejection of the application is notified to the party himself or to the legal representative of underage children or to the authorized representative.
Third country nationals already resident in Austria provided they are authorized are just as entitled to make applications as an authorized "non-applicant".

Re 3.

As a result of the new Asylum Law which entered into force on 1 January 1998, the legal situation is as follows:

A specific right to family reunification exists only where asylum is granted but not in connection with the award of any other status (e.g. de facto status or right of residence on humanitarian grounds). Detailed explanations on the situation with respect to asylum law will be found in the replies from the Federal Ministry of the Interior dated 2 August 1997 (72.795/127-III/13/97), CIREA Working Party, on family reunification and the grant of refugee status.

Re 4.

(a) Polygamy is a punishable offence in Austria. As a result of this unambiguous attitude on the part of the legislator, family reunification can involve no more than one spouse.

(b) That is de facto possible inasmuch as the precondition for family reunification is merely a marriage which has not been dissolved and since the husband is not required to give any details of any other wives he may have, although the wife "selected" has to make the application herself or authorize the husband to make the application for her.
(c) Yes, since a family is deemed to comprise a single spouse.
(d) Yes, if the marriage has not yet been dissolved (living apart is not enough).
(e) Yes, since it is obvious that there is no intention of living as a family.

Re 5.

No provision is made in Austrian law for family reunification with unmarried partners (regardless of their sex). Family reunification presupposes a genuine marriage.

Re 6.

(a) These principles apply to children of a resident third-country national as well as to adopted children but not to children of the spouse applying for reunification.
Step-children of relatives of Austrian citizens are granted right of residence without reference to quota.
(b) Family life within the meaning of Article 8 of the European Human Rights Convention (EHRC) presupposes custody of an underage child.

Re 7.

(a) In principle, children qualify for family reunification until the age of majority; for the children of aliens who settled in Austria before 1 January 1998, reunification applies only to children who have not reached the age of 14.
(b) There has never been any time limit, the only precondition applied for reunification being the availability of a place under the quota.

Re 8.

(a) and (b) Family members who have come to join the family by way of reunification may apply for a residence permit in their own right.
The right to work is not in principle granted until after 4 years, unless before that date the family member has an employment authorization, work permit, or an exemption.
(c) The family relationship must continue to exist.
(d) Residence permits granted ex officio on humanitarian grounds with the agreement of the Federal Minister for the Interior.

Re 9.

(a) When assessing whether accommodation is "appropriate by local standards", particular attention is paid to local circumstances, sanitary conditions (avoidance of overcrowding), etc. The space allocation directives for local council flats and the like can be followed in this respect.
(b) The resident alien must be able to provide accommodation as well as sufficient insurance cover (sickness and social insurance).
When assessing whether "sufficient resources" are available, welfare guidelines are followed.

(c) Yes, although account must be taken of Article 8 of the EHRC (respect for private and family life) as well as of the length of time the persons concerned have been in the country and the extent of their "integration".

Re 10.

(a) and (b) Since a valid passport is a precondition for the grant of a residence permit, the individual's identity must have been established. Any documents such as birth certificates or evidence of marriage should be produced by the alien since the burden of proof is on him.

(c) Yes, since establishing the person's identity and/or proving his/her family relationship is a precondition for award of the residence permit.

(d) No provision is made for medical examinations, but applicants are obliged to make themselves available for fingerprinting and photographing.

(e) A police check is made on the authenticity of the documents submitted.

Re 11.

Family reunification with parents is allowed only for relatives of EEA citizens and Austrian citizens and provided their support is guaranteed.

Re 12.

The spouses and underage children of students are admitted to join them provided they do not intend to work and if all other legal parameters are met.

Re 13.

(a) Since 1 January 1998: The alien must, when making the application, state whether he wants his family to join him and indicate how many people are involved. Every family member needs to receive a quota place. If enough places are available and if the family members have already applied the whole family can be admitted at the same time.
If reunification is not wanted until later, the quota place is kept for them if the family members also submit an application within one year of the original applicant's submission.

(b) Limited to the spouse and underage children.

Re 14.

Article 8 of the EHRC
The EHRC is the most important of the many Conventions Austria has ratified and has constitutional status.

Re 15.

Yes, this provision has constitutional status.

Re 16.

Yes, in this context the Association Agreement between the EEC and Turkey is of particular importance.

Re 17. See reply to question 8(b).

Re 18.

The essential conditions for family reunification have been covered in the replies to the previous questions.

Re 19.

Harmonization in the area of residence permits and official procedures in the individual Member States is desirable and efforts should be made to achieve this as has already proved possible with respect to visas in transposing the Schengen Agreement.

1. Under the general legislation, (Decree-Law No 59/93 of 3 March 1993), a residence permit is valid for at least a year.
As residents are entitled to family reunification by law, irrespective of their permitted period of residence, no distinction is made between short-term and long-term residents.

   (a) See the preceding reply.

   (b) Any foreign national may be admitted to the country, together with members of his/her family, for residence purposes, provided the legal requirements are complied with.

   (c) No minimum period of residence is required as a condition for allowing family reunification.

   (d) None is required.

   (e) Family reunification must, as a rule, be applied for while the members of the resident's family are outside the country.

   (f) The issue of a residence permit to foreign nationals entering the country without the requisite consular visa (residence visa) represents an exceptional measure.

2. The foreign national seeking a residence permit to join a member of his/her family resident in the country has to submit the relevant application.
It is the applicant who is entitled to appeal against a decision turning down the application.

3.

   (a) The rules and practice regarding the right of family reunification for those with refugee status, as set out in 10240/96 ASIM 130, are still in force in Portugal. However, the Portuguese Parliament recently passed new asylum and refugee legislation, which is shortly to come into force. The future law will amend the present arrangements for family reunification. The current discretionary power will then be tied down as follows:

   - the effects of asylum will be held to extend to the spouse and to under-age, adopted or incapacitated children, where the applicant so requests, without prejudice to application of the rules on exclusion and refusal of asylum;

   - where the applicant is under the age of 18 and so requests, its effects will be held similarly to extend to the father, the mother and under-age brothers and sisters for whom the applicant is the sole source of support;

   - the members of the applicant's family referred to in the preceding indents may alternatively, at the applicant's request, be issued a special residence permit by the Minister for the Interior, without needing to meet the requirements of the general rules for residence in the country by foreign nationals.

(b) The right of family reunification for those granted temporary protection, in particular under Article 10 of the Asylum Law (Law No 70/93 of 29 September 1993), is governed by the general rules for foreign nationals, in particular Article 28(d) of Decree-Law No 59/93 (facilitation of family reunification as a criterion in assessing residence visa issue) and Article 67 of the Portuguese Constitution, which affords protection for the family.

4.

(a) No.

(b) Yes.

(c) Family reunification is allowed for one wife only. If a second wife cannot qualify for family reunification, then her children cannot either.
For children of the resident, see 6 below.

(d) Family reunification will be allowed only if the marriage with the woman admitted to the country is dissolved, by means of a divorce, and the resident proves that he has married the second woman.

(e) Family reunification may be allowed for the spouse and children, provided the resident expressly states a wish for such.

5. No.

6.

(a) and (b) If a child is the offspring of the resident only or of the spouse only, family reunification with the parent in question will be allowed, provided he/she has been awarded parental authority or custody of the child.
Family reunification does extend to children adopted by the resident.

7.

(a) Family reunification is limited to under-age or incapacitated children.

(b) No.

8.

(a) to (c) The circumstances under which family reunification was allowed may change, especially where the spouses divorce or separate, which may have implications for custody of under-age children.
In the event of any such change, allowance will be made for it so as to enable a foreign national admitted by way of family reunification to remain in the country but, in order to have a residence permit renewed, he/she will have to show fulfilment of the requirements to be met, particularly as regards means of subsistence.

It should also be pointed out that any resident, whether or not admitted to the country by way of family reunification, may work, subject to compliance with the relevant legal provisions, which do not distinguish between residents.

9.

(a) The term "adequate accommodation" is interpreted in accordance with Article 65(1) of the Portuguese Constitution, which reads:

"Everyone shall be entitled, for themselves and their family, to housing of a suitable size, in conditions of hygiene and comfort, which safeguards personal intimacy and privacy of family life".

(b) The means of subsistence required for issue of a residence permit are not laid down by law.
In practice, however, regard is had to the figures set each year for the national minimum wage (Decree-Law No 34/98 of 18 February 1998).

(c) Yes.

10.

(a) The identity of those to be admitted to the country and the nature of their family relationship with the resident are established on the basis of documents.

(b) It is for those concerned, i.e. people claiming to be members of family, to produce proof of this.

(c) Yes.

(d) Blood tests are not used.

(e) Documents (originals or authenticated photocopies) are as a rule accepted, unless there is any reason to believe them not to be genuine.
If their genuineness is open to any doubt, the necessary steps are taken, with the use of forgery detection equipment in particular.

11. Relatives in the ascending line of residents or of their spouses may qualify for family reunification, where dependent upon them.

12. In order for a member of a student's family to qualify for family reunification, the student needs to be resident. It should be pointed out that, as a rule, foreign nationals admitted to the country to study or for training are not issued a residence permit but rather a consular visa renewable to allow them to remain for the duration of their course or training scheme.

13.

(a) The legislation makes no provision for any quota system.
All applications for residence permits for family reunification purposes are assessed and decided on as and when submitted.

(b) There is no limit on the number of family members who may qualify for family reunification, subject to the comments in 7(a) and 11 above.

14. The Portuguese Constitution includes a stipulation that "the family, as a basic component of society, shall be entitled to protection by society and the State and to the provision of all such conditions as make for the personal fulfilment of its members" (Article 67(1)). According to legal literature, "protection of the family means, first and foremost, protection of family unity. The most notable expression of that idea is the right of common abode, i.e. the right of members of the family unit to live together". (Gomes Canotilho and Vital Moreira in *Constituição da República Portuguesa Anotada*, 3rd edition, page 351).

15 and 16. Family reunification policy reflects obligations under the international instruments by which Portugal is bound, in particular the European Convention on Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

17. Foreign nationals allowed residence by way of family reunification may take up employment, irrespective of length of prior residence; they have to comply with the provisions of legislation governing work by foreign nationals and the legal rules making access to certain professions dependent upon fulfilment of specific requirements.

18. No.

---

1. Notion of "expectation of permanent or long-term residence"

(a) Persons granted a permanent residence permit (A status); see Annex attached.

(b) Family members of all the persons referred to in (a) may apply for and be granted a residence permit at the same time as the principal subject.

(c) Not required.

(d) See (c).

(e) and (f) Family members are required to apply for a residence permit before coming to Finland (Article 18 of the Aliens Act). In the cases referred to inArticle 20 of the Aliens Act, however, a fixed-term residence permit may be granted to them after their arrival in Finland. The granting of a residence permit after entry is, however, the exception.

2. Persons entitled

The residence permit application is normally initiated by the family member resident abroad (the applicant). On the basis of Article 19(2) of the Aliens Act, a family member already legally resident in Finland who is a refugee under the Geneva Convention or who has been granted a residence permit because of the need for protection or on pressing humanitarian grounds is, as an exception to the general rule, similarly entitled to initiate an application.

3. Refugees

(a) Yes.

(b) A position did not need to be taken on the matter; the intention in the Resolution is unclear in this respect.

4. Spouses: polygamous marriages (and relationships)

(a) No.

(b) Yes. Moreover, where one spouse is already in another EU/EEA Member State, a residence permit for Finland is not usually granted to the other spouse.

(c) Yes.

(d) Yes, if the husband and second wife are not officially separated.

(e) Yes.

5. Unmarried partners

Unmarried partners (including same-sex partners) are regarded as lawfully wed spouses for the purposes of the granting of residence permits once they have cohabited continuously for at least one year, if there is no offspring from the union.

Official registration of household occupants is one of the measures designed to prevent abuse.

6. Admission of children

(a) The person already lawfully resident in Finland is required to have sole custody of the child or, alternatively, written consent from the person having joint custody. The custody requirement applies also to stepchildren.

(b) The consent of the other person is required (see 6(a) above).

7. Upper age-limit for children joining their parents

(a) Unmarried children under the age of 18 may acquire a residence permit. 18 is the statutory age of majority in Finland. The age-limit in the case of children of Maltese, Turkish and Cypriot nationals is 21.

(b) No.

8. Independent residence status for family members

(a) Residence permits granted for family reunification reasons are generally of the permanent type (A status). Persons may acquire permanent residence status after having lived in the country for two years, when they are entitled to independent residence status irrespective of the continuation, or otherwise, of family life.

(b) A person having entered the country for family reunification reasons has the same chance as any other alien to apply for a residence permit on other grounds. Cases are considered on an individual basis.
Owing to the low number of cases involved, no established guidelines exist.

(b) Certain persons are exempt from the work permit requirement: inter alia, the spouse or partner of an alien permanently resident in Finland who has been granted a residence permit on grounds of need for protection (Article 25 of the Aliens Act). Persons who have acquired a permanent residence permit do not require a work permit. A work permit is granted without restriction to, inter alia, the spouse of such a person where the latter has been granted a residence permit on pressing humanitarian or other special grounds. If these persons apply for a residence permit on other than family grounds, their right to work is decided on the basis of a normal work permit appraisal.

(c) Continuation of the family relationship is no bar to the granting of another type of residence permit if the relevant requirements are met.

(d) No special principles have been established.

9. General conditions for family reunification

Adequate accommodation or the possession of sufficient resources is not a requirement in Finland for the granting of a residence permit to family members of an alien who has been granted a permanent residence permit.

10. Identification of family members

(a) A family member applying for a residence permit abroad is interviewed by the Finnish Representation and the local police in Finland interview a family member legally resident here. Documentary proof of family connection is required wherever possible. In certain cases, the hearing abroad has taken the form of detailed interviews conducted by officials of the aliens office, and the results have been compared with those of similar interviews conducted by the local police in Finland.

(b) Responsibility for settling the issue lies with the authorities. The family member must provide clarification, i.e. firm evidence in support of his/her application.

(c) Yes. A residence permit is not granted in these circumstances.

(d) Finland has experimented with the use of DNA testing to determine family connection in cases where the applicant is unable to produce documentary evidence for very plausible reasons (e.g. civil war). Results indicate, inter alia, that many persons refused on the basis of a previous hearing were able to prove their family connection on the strength of DNA tests. On the other hand, very many of the 311 persons originally registered for testing never showed up and in the end only 126 were tested. With one exception, all those tested were Somali nationals. The cost was met in this case from State funds. Although DNA testing is not the practice at present, the possibility of its future use is currently under discussion.

(e) Documents of doubtful validity may be sent for examination to the Central Criminal Police forensic laboratory at the behest of the local police or the Aliens Office.

11. Admission of parents

A residence permit is usually granted to the parents of a family member, already legally resident in Finland, who arrived in the country as an unaccompanied minor. Parents or other relatives outside the nuclear family of an immigrant who has come of age may acquire a residence permit if they are completely dependent on their relative resident in Finland.

12. Family reunification with students

In the case of students (whose period of intended residence is only temporary), family members may be issued with a temporary residence permit where the period of study is at least one year.

13. Family reunification quotas

Persons meeting family reunification requirements may enter the country immediately. No quotas or timetables are applied.

14. Requirements of constitutional law

None.

15. Article 8 of the European Convention on Human Rights

The requirements of the European Human Rights Convention and the decisions of the European Court of Human Rights are complied with in the provisions of the Aliens Act and its practical implementation, bearing in mind, however, that Finnish national policy is more liberal than Article 8.2 of the Convention, not all the possibilities of which are applicable in our country.

16. International Conventions

No.

17. Ability to take employment

See point 8 above. No period of residence is required before a work permit is issued.

18. Other conditions

No.

19. Scope for further work

ENTRIES TO BE MADE IN VISAS AND RESIDENCE PERMITS
(STATUS CATEGORY A, B, D and F)

"A" GROUP COMPRISES THOSE ELIGIBLE FOR A PERMANENT RESIDENCE PERMIT AFTER TWO YEARS OF CONTINUOUS RESIDENCE (Article 16 of the Aliens Act)

I. LINKS WITH FINLAND

A.1 Former Finnish national or at least one parent currently or formerly a Finnish national

A.2 A person from the territory of the former Soviet Union of Finnish descent

A.3 A person of Finnish descent other than that referred to in A.2, or with Finnish adoptive parents

A.4 The spouse of a Finnish national

A.5 The spouse or child under 18 years of age of an alien permanently resident in Finland

A.6 A person demonstrably possessing a special other reason, such as a close family connection, a marital connection, an intended marital connection or a humanitarian reason, for acquiring a residence permit

II. REFUGEES AND ASYLUM SEEKERS

A.7 A quota refugee and members of his/her family taken in by Finland

A.8 An asylum seeker granted refugee status in Finland, along with members of his/her family

A.9 An asylum seeker granted a residence permit on grounds of need for protection, and members of his/her family

A.10 An asylum seeker granted a residence permit on humanitarian grounds, and members of his/her family

III. A PERSON GRANTED A RESIDENCE PERMIT ON THE BASIS OF A WORK PERMIT APPRAISAL

A.11 A person granted a work permit on the grounds that he/she will be employed in a sector in which a continuous and long-term need for skilled labour is found or thought to exist

A.12 An employee in the field of science, art and general culture

A.13 A person who has come to teach his/her mother tongue or to perform some other teaching work calling for a foreign teacher

A.14 A person who has come to work in a managerial or special capacity for a subsidiary of a foreign undertaking or a multinational firm

A.15 An employee of an ethnic restaurant

A.16 A person who acquires a work permit for a job which calls for a knowledge of the language, culture, customs, conditions, etc. of the country of departure

IV. PROFESSIONALS AND FAMILY MEMBERS

A.17 A businessman

A.18 A forestry or agricultural worker

A.19 A self-employed person

A.20 Members of the families of persons belonging to groups A.11 to A.19.

1. Notion of "expectation of permanent or long-term residence"

(a) The main categories falling within the definition are as follows:

- refugees (not in themselves covered by the Resolution);
- people with reasons akin to those of refugees;
- people issued a residence permit on humanitarian grounds;
- people issued a residence permit on grounds of family reunification with someone resident in Sweden;
- immigrant workers, where employment is not for a limited period;
- self-employed people.

It should be pointed out that, under Swedish legislation, an alien is generally issued a permanent residence permit straight away as a first permit if he or she intends to settle in Sweden and is accepted for immigration. Exceptions to this include some cases in which family reunification is given as a reason (see 8 below) and self-employed people, who are issued residence permits for a two-year probation period. Even where a permit is issued for a limited period, however, such a person does come within the definition.

(b) Members of family of those in these categories may generally be issued residence permits at the same time as the principal. An exception is made, for instance, for someone issued a residence permit for a limited period on grounds of family reunification (see 8 below) who in turn wants to bring in relatives other than his or her own children under the age of 18. In such a case, a permit may be refused until such time as the principal has been issued a permanent permit, which will be forthcoming only after two years' residence in Sweden.

(c) There is no requirement for the principal to have been resident in the country for any length of time before family reunification is allowed (see, however, the comments in (b) above).

(d) -

(e) As a general rule, a residence permit has to be applied for and issued before the person enters the country. This applies irrespective of the category into which the applicant falls.

(f) A permit may be applied for and issued after entry where it is clear that the person would have received a residence permit if the case had been considered prior to entry into Sweden. This applies irrespective of the category into which the applicant falls.

2. Persons entitled

The application is made by the person abroad who wants to come to Sweden and not by the person already resident in the country. If anyone else is to act for the applicant, he or she requires formal authority to do so.

3. Refugees

(a) Yes, the same rules apply.

(b) Yes, see 1 above. Under Swedish legislation, the same family reunification rules apply to all, irrespective of the grounds on which a residence permit has been issued to the person resident in the country. In the case of those granted temporary protection, however, family reunification is allowed only for a husband or wife and children aged under 18.

4. Spouses: polygamous marriages (and relationships)

(a) Aliens legislation does not make any provision regarding polygamous relationships. It is, however, an offence under Swedish criminal law to commit bigamy. Polygamous relationships are also considered to go against Swedish society's basic values.

(b) In order for a residence permit to be issued, the husband in Sweden is generally required to divorce one of the wives and thus be left with only one wife.

(c) Where the father has legal custody of the children, the children cannot generally be refused residence permits, if the father and children have previously been living under the same roof. On the other hand, the woman cannot normally expect a permit.

(d) In order for residence permits to be issued to the wife and children, the wives already resident in Sweden are generally required to obtain a divorce.

(e) A wife or husband may be refused a residence permit if the person already resident in Sweden is living in a relationship akin to marriage with any other partner. If the person resident in Sweden has legal custody of a child and they have previously been living under the same roof, the child cannot generally be refused a residence permit.

5. Unmarried partners

People living together in a relationship akin to marriage are treated in the same way as married people and homosexual relationships in the same way as heterosexual ones. In order for a residence permit to be issued, the relationship needs to be considered a serious one. This point is also considered where a marriage is given as grounds for a permit. No distinction is thus made in this respect.

Factors looked at in considering whether the relationship is to be regarded as serious are how the partners first met, their subsequent contacts, their knowledge of one another's family, residence and work backgrounds and whether they can both communicate in the same language. If there are glaring inconsistencies between the versions given by the partners or if they do not speak the same language, this suggests that the relationship is not a serious one. The comments in 1 above also apply to those in question here and reference should further be made to 8 below.

6. Admission of children

(a) A child of one of the spouses may be issued a residence permit if he or she has legal custody of the child and if the child and the parent with custody have previously been living under the same roof.

Under the same conditions, a stepchild of one of the spouses does not have as strong a right to be reunited with a step-parent resident in Sweden.

(b) Where the parents share custody of a child, the consent of the parent abroad is generally required for the child to move to Sweden.

7. Upper age limit for children joining their parents

(a) Children under the age of 18 are entitled to be reunited with their parents in Sweden. It is a prerequisite that children have not yet established a family of their own. There are several reasons why lawmakers opted for that age limit. It is the age of majority in Sweden and the age limit for children under the Child Convention. It is also an age limit mentioned in the Resolution in question and applied in many other European countries.

(b) The age limit for children wishing to be reunited with parents resident in Sweden has been reduced from 20 to 18. There is no requirement now, nor was there previously, for an application to be made within a certain time.

8. Independent residence status for family members

(a) Anyone accepted for family reunification purposes may be issued a permanent residence permit straight away as a first permit. This applies to all categories. That person is thereby entitled to live in the country in his or her own right.

Where the partners in a marriage or cohabitation relationship have only known each other for a fairly short while, however, an arrangement involving limited, six-month permits is applied for a two-year period. Each renewal is conditional upon continuation of the relationship. Not until the end of that probationary period is the person in question entitled to live in the country in his or her own right.

(b) The right to work is available straight away upon issue of the first residence permit, regardless of whether it is for a limited period or permanent.

(c) See (a) above.

(d) If a relationship breaks down during the probationary period just referred to, the alien has to return to his or her country of origin. Exceptions are made, for instance, if a woman has been subjected to violence or otherwise ill-treated during cohabitation, if there are children involved in the relationship and if she is in danger of being treated as a social outcast on returning to her country of origin.

9. General conditions for family reunification

(a) There is no requirement for accommodation to be available.

(b) There is no requirement for availability of resources to support the person.

(c) See (a) and (b) above.

10. Identification of family members

(a) Identity is established by means of, for instance, birth certificates, passports, identity cards or other documents. Family relationship is established by means of, for instance, birth certificate particulars, marriage certificates or other documents. The partners are also interviewed separately. Cross-checking is possible against any information already supplied by, say, the person already resident in Sweden.

(b) The burden of proof is on the applicant.

(c) A residence permit may be refused if the applicant has not plausibly established his or her family relationship or identity. It has to be considered in each individual case whether the applicant has substantiated family relationship or identity in an acceptable manner. Allowance is made for the fact that it may be difficult for the applicant to produce full proof of this.

(d) There is no experience of blood tests or other medical methods of establishing family relationship.

(e) Documents produced are sometimes checked for authenticity, mainly by way of Swedish embassies abroad but also through inspection by forensic experts in Sweden.

11. Admission of parents

Parents and other close relatives may be issued a residence permit only if in their country of origin they formed part of the same household as the person(s) resident in Sweden. As a further requirement, there has to be some kind of dependent relationship making it difficult for the relatives to live apart. This means that they must have been living in the same household immediately before the resident came to Sweden and that the application for family reunification must be made fairly soon after the resident settled in Sweden. In exceptional cases, where special reasons so dictate, a residence permit may also be issued to some other close relative of a refugee or of a person with reasons akin to those of a refugee.

12. Family reunification with students

A husband, wife or cohabitation partner of a student may be issued a residence permit at the same time as the principal if resources are available to support them during their stay. The same applies to their children. No work permit is issued.

13. Family reunification quotas

(a) Anyone issued a residence permit is entitled to enter the country immediately. No quotas or time scales are applied.

(b) There is no numerical limit for this purpose.

14. Requirements of constitutional law

No.

15. Article 8 of the European Convention on Human Rights

The Convention has been incorporated into Swedish law. As stated in 5 above, Swedish practice treats other cohabitation relationships in the same way as marriage. As far as Sweden is concerned, one case on which Article 8 had a bearing involved the expulsion of an entire family from the country, when one of its members had vanished. The question then arose of whether expulsion of the other members of the family would contravene Article 8. Landmark rulings have now been given by the European Court.

16. International Conventions

It should merely be pointed out here that the Nordic countries form a passport union with a common labour market, without any residence or work permit requirements. Scandinavians and Finns are thus entitled to enter and live in another Nordic country and take up employment there freely, without any restrictions on the scope for members of their family to join them.

17. Ability to take employment

Anyone issued a residence permit for family reunification is also at the same time entitled to work. A person is not therefore required to have held a residence permit for a particular length of time before a work permit is issued.

18. Other conditions

Marriage or a cohabitation relationship does not generally constitute grounds for issue of a residence permit if either of the partners is under the age of 18.

In examining an application for a residence permit, consideration has to be given to whether the person in question can be expected to lead a respectable life. In order for misconduct to be taken into account, it needs as a rule to have been established by a final legal judgment. Such misbehaviour has to be weighed against a person's reasons for being issued a residence permit. The stronger the relationship, the more serious must be the fault to be found with the applicant in order for a permit to be refused. Even less serious faults may warrant rejection if the family relationship adduced is a borderline case for issue of a permit. As an alternative to refusing a permit altogether, a permit with a time limit may be issued for a probationary period.

19. Scope for further work

Further work needs to be directed along practical lines. One interesting idea, depending somewhat on the replies now received regarding 10 above, might be further exploration of issues involved in establishing family relationship and identity.

1. Notion of "expectation of permanent or long-term residence"

a. (i) Fiancé(e) or spouse of British citizen or of persons settled in the UK in their own right

(ii) Commonwealth citizen aged 17 or over, who is able to provide proof that one of his grandparents was born in the United Kingdom and Islands and is able to work and intends to take or seek employment in the United Kingdom

(iii) Unmarried partners (see answer to Question 5)

(iv) Children (see answer to Question 6)

(v) A businessman, sole representative, self-employed person, investor, writer, composer, artist or a person in employment approved by the Department for Education and Employment

(vi) A domestic worker in a private household, airport based operational ground staff, overseas government employee, minister of religion, missionary or member of a religious order; Representatives of an overseas newspaper, news agency or broadcasting organisation

(vii) A person of independent means

(viii) A person who has established himself in self-employment under the provisions of an EC Association Agreement

b. (i) dependent minor children may accompany a parent who is admitted to the UK as a spouse, but are only allowed to accompany a parent admitted as a fiancé(e) where there are compassionate circumstances which would make their exclusion from the UK undesirable

(ii) The spouse and children of the principal subject may be admitted at the same time

(iii) Unmarried partners (see answer to question 5)

(iv) Children - n/a

(v) to (viii) The spouse and children of the principal subject in all these categories may be admitted at the same time, provided they hold the necessary entry clearance

c. (i) No minimum period of lawful residence is required, but where a sponsor is not a British citizen he or she must have indefinite leave to remain in the UK.

(ii) to (viii) No minimum period of lawful residence is required.

d. Not applicable

e. In all categories family reunification should be applied for whilst family members are outside the country.

f. (i) and (ii) The spouses and dependants of British citizens or persons settled in the UK and the dependants of those admitted under the UK ancestry provisions may be granted leave to remain "in-country" provided they are not here in breach of immigration laws and all the requirements of the Immigration Rules are met.

(iii) Unmarried partners (see answer to question 5).

(iv) Children (see answer to question 6).

(v) to (viii) Dependants in these categories will only be granted leave to remain "in-country" in the most compelling and compassionate circumstances.

2. Persons entitled

It is the person seeking leave to enter or remain in the UK who is required to make the application and to whom notice of refusal, if appropriate, will be sent.

3. Refugees

a. Yes: Refugees, and those who have completed 4 years residence in the UK on exceptional leave to remain, are entitled to be joined in the UK by their spouse and minor children, provided the relationship existed prior to the sponsor's departure from the country of origin and provided the applicants are related as claimed.

Relatives of refugees who are admitted under the family reunion policy will normally be recognised as refugees, unless there are reasons why it is not appropriate to do so; e.g. they are of a different nationality to the sponsor or have specifically requested not to be recognised as refugees.

b. The relatives of people in the UK on exceptional leave to remain may be allowed to join their sponsor here, as set out in answer to question 3a

4. Spouses : Polygamous marriages (and relationships)

a. Government policy not to allow the formation of polygamous households in the UK is enshrined in Section 2 of the Immigration Act 1988. Paragraphs 278 and 279 of the Immigration Rules (HC 395) provide that no woman shall be granted entry clearance, leave to enter, leave to remain or variation of leave as the wife of a man if her marriage is polygamous and there is another woman living who is the wife of the husband and who is, or at any time since her marriage to her husband has been, in the UK or has been granted an entry clearance to join her husband in the UK or has a certificate of entitlement to the right of abode in the UK.

Under the Private International Law (Miscellaneous Provisions) Act 1995, which came into force on 8 January 1996 all marriages which are actually (de facto) monogamous but are celebrated under a law which permits polygamy are regarded as valid; the Act is fully retrospective. Therefore all potentially polygamous marriages which are actually monogamous are valid under United Kingdom law. The marriage will, however, be deemed to be void by any subsequent marriage of one of the parties or by an annulment.

b. Yes

c. Yes

d. The only circumstance in which a second wife could be admitted to the UK to join her husband would be where the wife previously admitted to join her husband has died, or the marriage has been permanently dissolved.

e. Whilst there is no legislation which prohibits the admission of an overseas national spouse where the sponsor already has an unmarried partner, it is unlikely that an applicant would be able to meet the requirements of the Immigration Rules relating to spouses in such circumstances

5. Unmarried partners

There is no provision in the Immigration Rules which permits a person to enter or remain in the United Kingdom on the basis of a common law or same sex relationship. However, under a concessionary arrangement, outside the Immigration Rules, which came into force on 13 October 1997, a person in a common law or same sex relationship may be eligible for leave to enter or remain in the United Kingdom if the couple can show that they have been living together in a relationship akin to marriage for

four years or more and intend to live together permanently. The couple must be legally unable to marry, and able to maintain and accommodate themselves without recourse to public funds. A person seeking entry to the United Kingdom must hold a valid entry clearance for entry in this capacity.

An application for leave to remain on this basis is likely to fall to be refused if the applicant has overstayed any limited leave to remain granted in another capacity or is the subject of any deportation action.

A person who fulfils the criteria will normally be granted 12 months leave to enter or remain in the United Kingdom. On completion of the 12 months leave, they may apply for settlement. A person may be eligible for settlement on this basis if they can show that they have completed 12 months leave as the unmarried partner of a person settled in the UK (and had been admitted to the UK for 12 months or given an extension of stay for 12 months on this basis), that the relationship is still subsisting, that they intend to live together permanently and are able to maintain and accommodate themselves without recourse to public funds.

In order to prevent abuse, a couple are expected to show documentary evidence of cohabitation for the preceding 4 year period, and evidence of a committed relationship. Documents could include joint commitments such as bank accounts, investments, rent agreements, mortgage, death benefits, birth certificates of any children of the relationship, correspondence which links the couple to the same address, and any official records of their address, such as doctors records, DSS records and national Insurance records. Couples are not required to provide all of the above, but conclusive evidence of the relationship will need to be demonstrated.

6. Admission of children

a. Children who are the offspring of a resident or his/her spouse but not of the couple involved may seek leave to enter or remain in the United Kingdom under the Immigration Rules HC 395 paragraphs 297-298 The requirements are that either one parent is present and settled in the United Kingdom and the other parent is dead, one parent is present and settled here and has sole responsibility for the child's upbringing, or that there are serious and compelling family or other considerations which make exclusion of the child undesirable. The child must be under the age of 18, unmarried and not leading an independent family life. There should be adequate maintenance and accommodation for the child without recourse to public funds, and, if seeking entry to the United Kingdom, the child must hold a valid United Kingdom entry clearance for entry in this capacity.

The definition of parent is given in HC 395 paragraph 6. It includes the stepfather of a child whose father is dead, and the stepmother of a child whose mother is dead.

Children who have been adopted abroad in countries which are recognised in the Adoption (Designation of Overseas Adoptions) Order 1973 may seek leave to enter or remain in the United Kingdom under the Immigration Rules HC 395 paragraph 310-311. There are no provisions within the Immigration Rules for children adopted abroad in non-recognised countries, or children who have been adopted(not necessarily legally) by a United Kingdom national who has been resident abroad for a substantial period of time and have become integrated into the family as de facto dependants, to be admitted to the United Kingdom. However, there is discretion to admit children to the United Kingdom in order for them to be adopted through the courts here or to remain with their de facto adoptive family. In all adoption cases it must be shown that there has been a genuine transfer of parental control to the adoptive parents, and the child has lost and broken all ties with his family of origin. In all cases a child seeking entry to the United Kingdom must hold a valid United Kingdom entry clearance for entry in this capacity.

b. Where a child's parents are not married, or his parent's marriage subsists but they do not live together, or where the parents marriage may be dissolved, a child may qualify to join one parent in the United Kingdom provided that parent has had sole responsibility for the child's upbringing. The phrase "sole responsibility" is intended to reflect a situation where parental responsibility, to all intents and purposes, rests chiefly with one parent. Such a situation is in contrast to the ordinary family unit where responsibility for a child's upbringing is shared between the two parents (though not necessarily equally).

7. Upper age-limit for children joining their parents

a. Children may join their parents in the United Kingdom up to the age of 18, provided they are not leading an independent life, are unmarried and have not formed an independent family unit. Their parents must be able to maintain and accommodate them adequately without recourse to public funds.

It is considered desirable, wherever possible, for children to spend their formative years with their parents. After a child has reached the age of 18 he or she is regarded as an independent adult who would normally be expected to qualify for admission in his or her own right.

As a concession outside the Immigration Rules, entry clearance officers have the discretion to issue entry clearance to children over the age of 18 of work permit holders who are intra company transferees.

b. No.

8. Independent residence status for family members

a. The family member of a British citizen or person settled in the UK may be granted indefinite leave to remain after a probationary period of one year. Once indefinite leave to remain (settled status) has been granted to a family member he or she may remain in the UK independently of their sponsor, whether or not they remain in the family unit.

b. A person who has indefinite leave to remain is free to take any work provided he has attained the legal age for working in the UK.

c. The family member of a person in the UK in a category leading to settlement will qualify for settlement at the same time as the principal applicant. A family member is unlikely to seek leave to remain in another capacity unless the family unit breaks down or is no longer habitually resident in the UK, because to do so would usually put them into a category which does not lead to settlement.

d. If a marriage breaks down before the family members have been granted settlement the normal expectation is that they should return to their own country, as the reason for their stay no longer exists. Cases where violence is the reason for the breakdown of a marriage are considered sympathetically and in cases where the compassionate circumstances of the applicant are exceptionally compelling leave to remain may be granted outside the Immigration Rules. However, domestic violence does not automatically override the requirements of the Immigration Rules.

9. General conditions for family reunification

a. A family unit must have adequate accommodation for their needs. This accommodation may be shared provided that at least part of the accommodation is for the exclusive use of the family. The unit of accommodation for a couple may be as small as a separate bedroom, but it must be owned or legally occupied by them. Its occupation must not contravene public heath regulations and must not cause overcrowding as defined in the Housing Act 1985.

b. Where a person seeks leave to enter or remain in the UK as a family member, the requirement is that the couple must be able to maintain and accommodate themselves and any dependants without recourse to public funds. A sponsor may continue to claim any benefits to which he or she is entitled in their own right, but where the admission of family members is likely to result in <u>additional</u> recourse to public funds, the application will fail for refusal.

c. The maintenance and accommodation requirements of the Immigration Rules are applied equally at the entry and settlement stage, although it is very rare for settlement to be refused solely on the grounds that these requirements

cannot be met.

10. Identification of family members

a. An applicant may produce birth certificates, marriage certificates, photographs and correspondence in support of their claim to be related to a sponsor.

b. The burden of proof lies with the applicant.

c. Yes.

d. DNA testing is offered in cases where we are not satisfied that children seeking settlement are related as claimed to their UK sponsor; DNA testing is not compulsory. The scheme is funded and administered by the Foreign & Commonwealth Office and is available to all third country nationals under the age of 18 who are making a first application for entry clearance for settlement. A British-based firm is contracted to carry out the tests. Over-age reapplicants and those seeking entry to the UK for a purpose other than settlement may commission private tests at their own expense; we would consider such evidence provided procedures of the same standard as in Government tests have been followed.

e. Where we have reason to doubt the authenticity of civil status documents, we make enquiries of the issuing authorities if possible. Registers of stolen UK civil status documents are held.

11. Admission of parents

(i) Widowed mothers and grandmothers and widowed fathers and grandfathers aged 65 or over and parents or grandparents travelling together of whom at least one is aged 65 or over may be eligible for resident status if they are wholly or mainly dependent upon sons or daughters settled in the United Kingdom who have the means to maintain their parents and any other relative who would be admissible as dependants of the parents and also provide adequate accommodation for them without recourse to public funds. They must also be without other close relatives to turn to in their own country.

(ii) Children over 18, sisters, brothers, aunts, uncles and aunts over the age of 18 and parents and grandparents under 65 may come if they meet the above requirements and they live alone in the most exceptional compassionate circumstances.

(iii) As a concession outside the Immigration Rules, entry clearance officers have the discretion to issue entry clearance to dependent parents of work permit holders who are intra company transferees.

12. Family reunification with students

The husband or wife of a person admitted to or allowed to remain in the United Kingdom as a student under the Immigration Rules may enter the United Kingdom to join their spouse provided that each of the parties intends to live with the other as his or her spouse during the applicant's stay and the marriage is subsisting.

A child under the age of 18 may enter the United Kingdom as the dependant of a person admitted to or allowed to remain in the United Kingdom as a student provided that he or she is unmarried, has not formed an independent family unit and is not leading an independent life.

The spouse and\or child must be maintained and accommodated adequately without recourse to public funds and must intend to leave the United Kingdom at the end of his or her period of stay. The leave granted will not be in excess of that given to the student and employment will be prohibited except where the leave granted is for 12 months or more.

13. Family reunification quotas

a. All persons meeting the criteria set out in the Immigration Rules will be allowed to travel to the UK for family reunification. The UK does not operate a quota system.

b. The UK does not set a limit on the total number of family members who may join the person concerned. However, only the spouse, minor children, and any other relatives who are wholly dependant upon the sponsor, will qualify for admission.

14. Requirements of constitutional law

Legislation on family reunification is set out in the Immigration Act and Immigration Rules rather than in constitutional law.

15. Article 8 of the European Convention on Human Rights

It is considered that our Immigration Law and Rules are compatible with the UK's obligations under Article 8.

16. International Conventions

The criteria in the Immigration Rules are compatible with the UK's international obligations.

17. Ability to take employment

There is no period of residence to be completed before a person can take employment; only those admitted as fiancé(e)s are prohibited from taking employment and then only until their leave has been varied after marriage.

18. Other conditions

Overseas nationals are not allowed to travel to the UK to join a spouse until both parties are 16 years old.

19. Scope for further work

The UK believes that Member States' responses to this questionnaire will inform discussion on Chapter VII of the Commission's draft Convention on the admission of third country nationals (ASIM 185). It also seems likely that the responses will indicate that there is scope for closer harmonisation of Member States' policies and procedures.