

**EXPLANATORY MEMORANDUM TO
THE ARMED FORCES (GURKHA PENSIONS) ORDER 2007**

2007 No. 2608

1. This explanatory memorandum has been prepared by the Ministry of Defence (MOD) and is laid before Parliament by Command of Her Majesty.

2. Description

2.1. The Armed Forces (Gurkha Pensions) Order 2007 amends the Armed Forces Pension Scheme Order 2005 (SI 2005/438) to permit Gurkhas to transfer from the Gurkha Pension Scheme (GPS) to the pension scheme introduced under SI 2005/438. It also amends the Armed Forces Early Departure Payment Order (SI 2005/437) and the Armed Forces Redundancy Scheme Order 2006 consequential to the changes to SI 2005/438.

2.2. All the Orders mentioned in paragraph 2.1 were made under the Armed Forces (Pensions and Compensation) Act 2004.

3. Matters of special interest to the Joint Committee on Statutory Instruments (JCSI)

3.1. The JCSI will note that, while the Armed Forces (Gurkha Pensions) Order 2007 features Articles which are numerically sequenced, rules referred to in Articles 2 and 3, which contain pension scheme amendments, follow lettered parts. This is unusual for a statutory instrument but is the common form of numbering for pension schemes, and is adopted in these Articles because SI 2005/438 is sequenced in lettered parts.

4. Legislative background

4.1. The 2004 Act establishes the statutory framework for the Armed Forces pensions and compensation schemes, with the scheme rules for both set out in statutory instruments. This allows routine changes, including those implementing wider Government policies that have been subject to Parliamentary scrutiny and debate, to be implemented quickly and economically: it also allows substantial Parliamentary debate, where either House judges there to be policy issues of significant concern.

4.2. The change in policy to allow Gurkhas, who have traditionally been members of the GPS, to belong to one of the two AFPSs arises from a change in the Immigration Rules by the Home Office in October 2004 (the Statement of Changes in Immigration Rules laid before Parliament on 18 October 2004 under section 3(2) of the Immigration Act 1971) allowing ex-Gurkhas with at least four years service to apply to re-enter the UK after discharge and remain indefinitely. This change took effect from 1 July 1997 when the Brigade of Gurkhas became a UK based force. The intention to allow Gurkhas who were in service on or after 1 July 1997 to transfer to one of the two AFPSs was the subject of a Ministerial announcement on 8 March 2007 (Hansard 8 March 2007, Col 141WS – 142 WS).

5. Extent

5.1. This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1. As the Orders are subject to negative resolution procedures, and do not amend primary legislation, no statement is required.

7. Policy background

7.1 The GPS is designed on the premise that the Gurkha will retire to Nepal and benefits are set accordingly. Following the change in the Immigration Rules, this presumption is no longer a reasonable one. Gurkhas with service on or after 1 July 1997 are therefore to be given the opportunity to transfer to one of the AFPSs (AFPS 75 and AFPS 05). The Armed Forces (Gurkha Pension) Order 2007 relates to those being given the opportunity to transfer to AFPS 05 and is unusual in that it extends the offer to those who have left service, with or without a pension, provided they served on or after 1 July 1997 and were still in service on 6 April 2006 (the date when members of AFPS 75 transferred to AFPS 05 in response to a similar offer to transfer). The choice of the July 1997 date reflects the change in Immigration Rules referred to above which itself acknowledges that after 1 July 1997 the expectation that Gurkhas would be discharged and retire in Nepal was no longer valid. New Gurkha recruits in 2007 were entitled to join AFPS 05 from their date of entry.

7.2 The Gurkha Offer to Transfer (GOTT) invites individuals to choose between transferring to AFPS 75 or AFPS 05 (for those in service on or after 6 April 2006), or remaining in GPS. There is no compulsion to transfer. The following has been done to assist members with their choice and to ensure that that choice is an informed one:

- booklets have been prepared on each of the schemes;
- two bespoke GOTT booklets have been designed: one for the serving population and one for those who have left;
- presentations have been delivered to serving Gurkhas in most of the locations where they are serving;
- presentations will be delivered to former Gurkhas, including in Nepal;
- a voice-over presentation has been produced in DVD format for those who have been unable to attend a presentation;
- a GOTT service centre is available to answer question;
- the MOD intra and internet sites contain useful information on the pension schemes generally and the GOTT specifically. It also contains a copy of the draft order with an address for comments;
- the Forces Pensions Society have scrutinised the Order in draft form and have declared themselves content.

7.3 The Committee will note that, although Gurkha service from 1 July 1997 is transferable on a one-for-one basis, Article 2 L4 provides that pre-1997 Gurkha

service counts proportionately depending upon the rank of the transferee. This proportion is not arbitrary: it has been arrived at after careful calculation by the Government Actuary's Department. It represents broadly the value of the pre-1997 benefits accrued in the GPS. A Gurkha transferring to either AFPS will be given fair pension value for his GPS service.

7.4. Further, the Committee will note that L.7(1) prevents a Gurkha who is already in receipt of a pension from the GPS from receiving a second pension commencement lump sum. This is as a consequence of the provisions of the Registered Pension Schemes (Transfer of Sums and Assets) Regulations 2006 (SI 2006 No.499) which states that such transfers are to be considered as a continuation of the original entitlement.

8. Impact

8.1. A Regulatory Impact Assessment has not been prepared for these Orders as they have no significant impact on business, charities or voluntary bodies.

9. Contact

9.1. Contact Sue McIntosh, Ministry of Defence, 0207 218 0564, email sue.mcintosh641@mod.uk if you have any queries on this memorandum.