

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

2007 No. 2609

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 Compensation) Amendment Order 2007 (“this Instrument”) amends the Armed Forces and Reserve Forces (Compensation Scheme) Order 2005 (“the 2005 Order”). It effects amendments to the 2005 Order to take account of the Gurkha Offer to Transfer exercise. The amendments do not fundamentally alter the 2005 Order.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 This Explanatory Memorandum should be read together with that accompanying the Armed Forces (Gurkha Pensions) Order 2007 (SI2007/2608), which Order comes into force on the same date as this Instrument. That Order amends the Armed Forces Pension Scheme Order 2005 (SI2005/438) to implement the Gurkha Offer to Transfer exercise. The Offer to Transfer exercise will enable Gurkha personnel to transfer from the Gurkha Pension Scheme to one of the Armed Forces Pension Schemes¹.

4. **Legislative Background**

4.1 The Armed Forces (Pensions and Compensation) Act 2004 gave the Secretary of State the power to make a new compensation scheme for injuries, illness and death caused by Service in the Armed Forces and Reserve Forces. The 2005 Order sets out the detailed rules of the scheme. It was introduced on 6 April 2005 and covers all injuries, illness and death occurring on or after that date. A number of minor amendments were made in 2006 by the Armed Forces and Reserve Forces (Compensation Scheme) (Amendment) Order 2006 (SI2006/1438). The changes to Gurkha pay in May 2006 and the subsequent Gurkha Offer to Transfer exercise have the effect that further amendments to the Scheme are required. The amendments made are detailed in paragraph 7.

5. **Extent**

5.1 This Instrument applies to all of the United Kingdom.

6. **European Convention on Human Rights**

¹ There are two schemes, the Armed Forces Pension Scheme 1975 and the Armed Forces Pension Scheme 2005.

6.1 As the Instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 The majority of the rules and provisions contained in the 2005 Order apply to Gurkhas in the same way as they do to all other military personnel. However, Schedule 3 of the 2005 Order makes provision for a different table of factors to be used when calculating the Guaranteed Income Payment payable to Gurkhas or the Survivor's Guaranteed Income Payment payable to their surviving spouses, dependants or civil partners. The different table of factors reflects the variations in the expected loss of salary and future pension as between Gurkhas and regular members of the Armed Forces. These variations are due to the special format and tax treatment of Gurkha salary and the different pension benefits received by Gurkhas, by virtue of their membership of Gurkha Pension Scheme.

7.2 Gurkhas now receive the same salary as members of the regular Armed Forces and, following the Offer to Transfer exercise, Gurkhas will have the option to transfer to one of the Armed Forces Pensions Schemes. Accordingly, Schedule 3 of the 2005 Order and the table of factors require amendment to take account of these changes.

7.3 This Instrument amends the 2005 Order by inserting a new Schedule 3, which contains a new table of factors and which specifies that this table is only to be applied to those Gurkhas who remain members of the Gurkha Pension Scheme after the Offer to Transfer exercise has completed. The table of factors at Schedule 5 of the 2005 Order, which applies at present to all regular members of the Armed Forces, will apply to Gurkhas who become members of one of the Armed Forces Pension Schemes. The Offer to Transfer exercise will complete by 1st October 2007 for serving Gurkhas and is likely to complete on 31st January 2008 for retired Gurkhas.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no significant impact on business, charities or voluntary bodies.

9. Contact

9.1 Contact **Mrs S J McIntosh** at the Ministry of Defence Tel: 0202 7218 0564, email sue.mcintosh641@mod.uk if you have any queries regarding the instrument.