



## BRIEFING PAPER

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# Gurkha Pensions

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## Summary

The Gurkha Pension Scheme was based on the Indian Army Model and provides an immediate pension at Indian Army rates those with at least 15 years' service. The UK government says that these pensions were designed for retirement in Nepal, where the cost of living is significantly lower than in the UK.

In March 2007, the Labour Government announced the outcome of a Review of Gurkha Terms and Conditions of Service. Differences between Gurkhas' terms and conditions of service and those of their British counterparts would be eliminated. For serving Gurkhas, and those with service on or after 1 July 1997, there would be an Offer to Transfer (GOTT) to the Armed Forces Pension Scheme. The reason for the 1 July 1997 cut-off, was that this was when the UK became the home base for the Brigade of Gurkhas and that changes in the immigration rules, backdated to 1 July 1997, meant there was an increasing likelihood of retired Gurkhas settling in the UK on discharge.

On 21 May 2009, following the high-profile Gurkha Justice Campaign, including Joanna Lumley, the Government announced a change in policy on Gurkha settlement rights. Gurkhas who had retired before 1 July 1997 and completed four years' service would have the right to apply to settle in the UK with their spouses and dependent children. There had been an agreement among parties to the discussions that there would be no direct read across to policy on pensions. However, campaigning to improve the pension rights of Gurkhas with service before 1997 has continued. In November 2013, an All Party Group launched a [Gurkha Welfare Inquiry](#).

In response to the report of this Inquiry in January 2015, the Government said it would implement a number of measures which would mean greater financial and social support for Gurkha veterans, including([HCWS234, 29 January 2015](#)).

The British Gurkha Welfare Society (BGWS) launched a legal challenge to the terms of the GOTT, regarding both the position of Gurkhas who retired before July 1997 and, for those who left after 1 July 1997, the treatment of service before that date. In July 2018 Defence Minister Mark Lancaster said that "legal challenges to the terms of the GOTT, up to the European Court of Human Rights, were rejected, with MOD's view that the transfer terms were fair and reasonable being upheld." ([PQ 162534, 17 July 2018](#)).

The Government's position remains that, in principle, an individual should qualify "for a pension according to the rules of that scheme at the time, and that improvements to public sector pension or compensation schemes should not be introduced retrospectively because of the burden such an approach would place on the Exchequer."([PQ 32156, 30 March 2016](#)).

# 1. Background

Until January 2007 British Army Gurkhas served under their own terms and conditions of service, which included a pension scheme, based on the Indian Army Model which provided an immediate pension, at Indian Army rates, to every Gurkha completing at least 15 years' service. A decision of the High Court in July 2010 provided a summary of the position:

The Gurkhas have played a long and distinguished part in the service of the Crown. Since 1947 they have formed an integral part of the British Army by virtue of arrangements put in place under the tri-partite agreement to which I have referred. That agreement provided that six regiments of Gurkha rifles should serve with the Indian Army and four be transferred to the British Army, forming the Brigade of Gurkhas. Gurkhas are recruited from Nepal. All are Nepalese nationals on recruitment and remain so until retirement. Their terms and conditions of service have been different from those of others in the British Army, although there has been a gradual alignment in recent years. Before 1997 the Brigade of Gurkhas was based in the Far East, particularly in Hong Kong. There has also been a long-standing arrangement whereby one regiment is based in Brunei. That arrangement continues. Before 1997 Gurkhas did serve from time to time in the United Kingdom at Aldershot but their base remained in Hong Kong. Pay and other conditions reflected the terms available to the Gurkhas serving in the Indian Army. Leave was taken in Nepal, much longer leave than allowed to others in the British Army, and the universal assumption was that Gurkhas would retire to Nepal. There were different arrangements relating to wives and children accompanying Gurkhas from the rest of the British Army, which formed part of the complaint in *Purja*. Prior to 1997 pay was much lower than for the rest of the British Army and pension arrangements entirely different. Gurkhas are recruited at the age of 18. Those who do not progress beyond the rank of corporal serve for 15 years. Put simply, the historical position was that after 15 years such Gurkhas retired and received an immediate pension, payable for life, based on their accrued service. No pension was payable if a Gurkha served fewer than 15 years, although almost all completed that length of service. Those promoted beyond the rank of corporal could serve for longer and received an immediate pension on retirement.

The position for those serving elsewhere in the British Army was that no pension could be paid immediately to soldiers or non-commissioned officers unless they completed 22 years' service. That pension could be deferred to 60. Those who served for less than 22 years accrued pension rights, but no pension could be taken until 60. Recent changes have resulted in the deferred pension age being raised to 65. Different arrangements, the details of which are immaterial for the purposes of the arguments in this application, apply to officers.

The long established GPS paid out pensions which were generally lower than those available to others who retired from the British Army, albeit that they were available sooner. However, the overall effect was that most Gurkhas received less than a soldier serving elsewhere in the British Army who had provided the equivalent service but whose pension was paid under the AFPS.

The return of Hong Kong to the Republic of China in 1997 gave rise to fundamental changes to the way in which Gurkhas served. The three regiments based in Hong Kong were unable to remain there. In consequence since 1 July 1997 three Gurkha regiments have been based in the United Kingdom, with one at any time being stationed in Brunei. The immediate impact was that as time passed all Gurkhas spent increasingly large amounts of their time in the United Kingdom and developed contacts and roots here; so too their families.

For some time prior to 1997 Gurkhas stationed temporarily in the United Kingdom had received a supplement to their pay. That arrangement became a permanent fixture for those based in the United Kingdom after 1 July 1997. The supplement brought the Gurkhas' take-home pay up to the level of a soldier of equivalent rank in the British Army. However, it was not treated as pensionable pay. Pension arrangements remained as before. The continuing assumption was that on retirement Gurkhas would return to Nepal. To speak of 'retirement' in the usually accepted sense of its association with approaching old or late middle age is inapposite. Most of those retiring were in their early 30s and would develop a second career in Nepal. Nonetheless, the pension payable could maintain a reasonable lifestyle, irrespective of whether the person concerned would (as was usual) earn additional money. The evidence suggests that the pension of an ordinary Gurkha in Nepal equated with the pay of a captain in the Nepalese Army.<sup>1</sup>

Once Gurkhas became based in Great Britain, there was pressure to bring their terms and conditions into line with British Soldiers. The pension arrangements for Gurkhas were the central issue in an application for judicial review in 2003. The MoD explained:

Gurkha pensions were a central issue when a group of Ex-Gurkhas applied for Judicial Review in 2003 which addressed a range of differences between Gurkha and UK TACOS. The Administrative Court, and subsequently the Court of Appeal, held that differences between Gurkha and British soldiers' pensions were lawful, on the basis of Gurkhas' retirement in Nepal (among other things). The proceedings are collectively referred to, after one of the litigants, as "Purja".<sup>2</sup>

The Gurkha pension scheme was closed to new entrants from 6 April 2006. There is information about the scheme on [Gov.UK](#) including a booklet [The Gurkha Pension Scheme: your benefits explained](#).

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<sup>1</sup> [British Gurkha Welfare Society and Others and Ministry of Defence \[2010\] EWHC 3 \(Admin\)](#); The archived MoD website has a section on [Gurkha Pensions](#)

<sup>2</sup> 'A Review of Gurkha Terms and Conditions of Service', Land Forces Secretariat, December 2006, House of Commons Library Deposited Paper 07/776; [R \(Purja & Others\) v Ministry of Defence \[2003\] EWHC 445 \(Admin\)](#)

## 2. Review of Gurkha terms and conditions of service

In March 2007, the then Parliamentary Under-Secretary of State for Defence, Derek Twigg, announced the outcome of the review of Gurkha Terms and Conditions of Service. With certain exceptions, the remaining differences between Gurkhas' terms and conditions of service and those of their British counterparts would be eliminated. Serving Gurkhas would have the opportunity to transfer to the Armed Forces Pension Scheme (AFPS), from a planned member transfer date of 1 October 2007. Retired Gurkhas who left service on or after 1 July 1997 would also be given the opportunity to access AFPS benefits:

### **Gurkhas (Terms and Conditions of Service)**

The Parliamentary Under-Secretary of State for Defence (Derek Twigg): I am pleased to be able to announce to the House today the outcome of a wide-ranging review of Gurkha Terms and Conditions of Service, which was announced by the then Secretary of State for Defence in January 2005. This has been a very comprehensive review and as a consequence it has taken longer than was originally anticipated.

As the House is aware, it has been the policy of successive British Governments to ensure that the terms and conditions under which Gurkhas serve in the British Army remain fair and reflect the needs of Gurkha soldiers and their families. The Gurkhas became a UK-based Brigade on 1 July 1997 and the time is now right for their terms and conditions of service to be revised fully to reflect their role and status in the 21st century.

As a result of this review I am pleased to announce that, with certain exceptions designed to satisfy the Government of Nepal, all the remaining differences between Gurkhas' terms and conditions of service and those of their British counterparts are to be eliminated. I am making arrangements necessary to ensure that members of the British Brigade of Gurkhas retain their distinctive identity and ethos as Nepalese citizens serving in their own units within the British Army.

The measures necessary to implement the new terms and conditions of service will begin to take effect from April 2007. In the particular case of pensions, we propose to give serving Gurkhas the opportunity to transfer from their current Gurkha pension scheme to one of the two armed forces pension schemes (AFPS), from a planned member transfer date of 1 October 2007. Retired Gurkhas who left service on or after 1 July 1997 will also be given the opportunity to access AFPS benefits.

This is good news, both for serving or recently retired Gurkhas and their families and for the British Army. The move to new and fairer terms and conditions of service will hopefully provide the basis for the foreseeable future of Gurkha service in the British Army, which is only made possible by the long-standing and friendly relations between the Governments and peoples of the United Kingdom and Nepal.

The review did not include consideration of the situation of Gurkha veterans who retired before 1 July 1997, for the reasons which my predecessor made clear to the House last summer. We

will continue to respond to veterans grievances with a view to resolving any misunderstandings which may have arisen.

A copy of the report of the review of Gurkha terms and conditions of service, which has been redacted so as not to disclose privileged legal advice, will be made available in the Library of the House.<sup>3</sup>

The report estimated that the proposed improvements in terms and conditions of service, including pensions would cost an additional £30m per year. The Treasury had agreed to spread the past service pension costs over 10 years."<sup>4</sup>

## 2.1 Reasons for not including those who left service before 1 July 1997

The first of July 1997 was the date the UK became the home base for the Brigade of Gurkhas. In addition, changes in the immigration rules, backdated to 1 July 1997, meant there was an increasing likelihood of retired Gurkhas settling in the UK on discharge. For this reason, the Government decided to exclude Gurkhas who retired before that date:

### **What is the significance of 1 July 1997? (new question 12/04/07)**

Up until 30 June 1997, the Brigade was regarded as an overseas force with its home base being the Far East (prior to Hong Kong it had been Singapore and Malaysia). On 1 July 1997, the UK became the home base for the Brigade of Gurkhas and revised terms and conditions of service were introduced.

### **What about the change to the Immigration Rule? (new question 12/04/07)**

There was a change to Her Majesty's Forces Immigration Rule, or HMFIR, in October 2004, which meant an increasing likelihood of retired Gurkhas settling in the UK on discharge. The effect of this change was backdated to 1 July 1997. This, together with the fact that the Brigade became UK-based on the same date, means that the Ministry of Defence needs to offer serving Gurkhas and some retired Gurkhas the opportunity to access Armed Forces Pension Scheme benefits, as enjoyed by the wider Army.

### **Why are you treating those who left the Army before 1 July 1997 differently? (new question 12/04/07)**

Before 25 October 2004, when the new HM Forces Immigration Rule was introduced, it was accepted that Gurkhas would be recruited in Nepal as Nepalese citizens, serve as Nepalese citizens and be discharged as Nepalese citizens, in Nepal. The 1 July 1997 cut-off date in HMFIR is to reflect when the British Army's Brigade of Gurkhas moved its headquarters from Hong Kong to the UK, and Gurkhas discharged on or after this date will therefore have had the opportunity to develop close physical ties with the UK.

Gurkha pensions are designed for retirement in Nepal where the cost of living is significantly lower than in the UK. A Gurkha pension is broadly the same as a good Nepalese salary, which is

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<sup>3</sup> [HC Deb. 8 Mar 2007, col 142WS](#)

<sup>4</sup> 'A Review of Gurkha Terms and Conditions of Service', Land Forces Secretariat, December 2006, House of Commons Library Deposited Paper 07/776, Chapter 14, para 13

why 15,000+ individuals compete every year for the 230 or so recruits taken by the Brigade of Gurkhas.<sup>5</sup>

## 2.2 Gurkha Offer to Transfer

As explained above, all Gurkhas with service on or after 1 July 1997 were given an option to transfer to one of the Armed Forces Pension Schemes: AFPS 75 (introduced in 1975 and closed to new entrants from 6 April 2005) or AFPS 05 (introduced for new entrants from 6 April 2005). Whether a Gurkha was given the option to join AFPS 75 or AFPS05 depended on when they were recruited. Leaflets explaining both schemes can be found on the [MoD website](#).

The Gurkha Offer to Transfer (GOTT) ran from 21st May 2007 to 29 February 2008.<sup>6</sup> The MoD produced a leaflet - [Gurkha Offer to Transfer \(GOTT\) – a guide to making your pension scheme choice if you are no longer serving in the Brigade of the Gurkhas](#).<sup>7</sup>

Legislation to enable the GOTT was included in the [Armed Forces \(Gurkha Pensions\) Order 2007](#) (SI 2007 No. 2608) and the [Armed Forces \(Gurkha Compensation\) Order 2007](#) (SI 2007 No. 2609).

On 19 July 2007, the Government announced that there would be “a significant increase” in Gurkha pensions backdated to January 2006. The increased benefits would be included in the Gurkha Offer to Transfer.<sup>8</sup>

All the 3400 serving Gurkhas made a positive election and nearly all chose the AFPS. Only 10 stayed in GPS. Of the 2230 eligible retired Gurkhas, 73% made a positive election. Most chose AFPS 1975, as the only scheme for which they were eligible. Only 65 made a positive choice to stay in the GPS.<sup>9</sup>

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<sup>5</sup> <http://tinyurl.com/4e2nzo>; See also [HC Deb, 4 June 2007, c171W](#); See also, [Letter from Anna Soubry to Jackie Doyle Price, 28 February 2014](#)

<sup>6</sup> MoD website, [Q and A for post-February 2008 queries](#)

<sup>7</sup> See also MoD, [Pensions Policy Instruction – Pensions Offer to Transfer to serving and retired Gurkhas](#)

<sup>8</sup> [HC Deb, 19 July 2007, c33WS](#)

<sup>9</sup> [Gurung & Ors, R \(on the application of\) v Secretary of State for Defence, \[2008\] EWHC 1496 \(Admin\) 2 July 2008](#), para 22



### 3. Legal challenges

A legal challenge was made to the lawfulness of the Terms of Conditions of Service and the pension arrangements of the Gurkha soldier retired from the British Army. The High Court issued its decision in the case of *Gurung & Ors, R (on the application of) v Secretary of State for Defence [2008]* on 2 July 2008. The case related to the treatment of service before 1997:

For those post 1 July 1997 years, 100% of the GPS value, albeit only 36% of the AFPS value, was transferred as 100% of the AFPS; that is the effect of the Year for Year transfer. The Claimants contended, and it is at the heart of the case, that that should have been the basis of transfer for all their years of service, including those before 1st July 1997 or 1st October 1993.<sup>10</sup>

The application was dismissed. Mr Justice Ouseley said:

A line was drawn; that was in itself reasonable, and the particular dates chosen for its drawing are reasonable too. The difference reflects not age in reality but the number of years of service based in the Far East or in the UK. If there was indirect discrimination on the grounds of age of "other status", it was justified and proportionate.<sup>11</sup>

The British Gurkha Welfare Society (BGWS) also applied to the High Court, seeking to challenge the pension arrangements implemented by the Gurkha Offer to Transfer [GOTT]. The application was dismissed by Mr Justice Burnett.<sup>12</sup> The BGWS then appealed to the Court of Appeal. The legal challenge related to two groups. The first group was those who left before 1997 and who were not entitled to transfer their GPS pension rights into the AFPS (the "pre-1997 group"). There are around 25,000 Gurkhas in receipt of a pension under the GPS who retired before 1997. The second was those who retired after 1997 and therefore could transfer their pension rights into the AFPS (the "1997 transitionals"). In this case, the challenge related to the way in which pre-1997 rights were calculated. Under the terms of the GOTT, all service on or after 1 July 1997 was converted on a year for year basis. Service before 1 July 1997 was converted on an actuarial value basis.<sup>13</sup> Around 90% of Gurkhas discharged after 1 July 1997, who were eligible to apply for indefinite leave to enter or remain in the UK, did so. They number about 2,000.<sup>14</sup>

Lord Justice Maurice Kay dismissed the appeal in respect of both groups. Regarding the "1997 transitionals", he said:

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<sup>10</sup> [Gurung & Ors, R \(on the application of\) v Secretary of State for Defence, \[2008\] EWHC 1496 \(Admin\) 2 July 2008](#), para 24

<sup>11</sup> *Ibid*, para 77

<sup>12</sup> [British Gurkha Welfare Society and Others and Ministry of Defence \[2010\] EWHC 3 \(Admin\)](#)

<sup>13</sup> GAD, [Report for the Ministry of Defence in relation to the case in the European Court of Human Rights, British Gurkha Welfare Society and Others v The United Kingdom, Application no: 44818/11, Comparison of Value of the benefits of the Gurkha Pension Scheme and the Armed Forces Pension Scheme 1975](#), 26 July 2013, para 4.30

<sup>14</sup> [The Court of Appeal decision is R v British Gurkha Welfare Society & Others And Ministry of Defence \[2010\] ECWA Civ 1098](#), para 3

25. In my judgment, Burnett J was correct to hold that the treatment of 1997 transitionals was both rational and justified. It was entirely reasonable to provide for the transfer of pension rights calculated on a full year basis for service since 1 July 1997 but only on an actuarial value basis for service prior to that date. The 1997 transitionals are not bound to retire to this country. They have a choice in the way fully explained by the judge. If they choose to do so, they will normally obtain gainful civilian employment. There are many variables. It was not necessary for the Ministry of Defence to assume that the amendment to the Immigration Rules would be rendered meaningless because some of the 1997 transitionals may feel unable to avail themselves of their enhanced rights, for financial reasons. Commonsense and the passage of time has shown this not to be so.<sup>15</sup>

In view of this, he considered the case of the “pre-1997 group” to be “wholly unsustainable”:

15. Although this group obtained no benefit from the amendment of the Immigration Rules in 2004, their immigration position did come to be ameliorated in 2009. However, it is common ground that the present challenge to the GOTT and the 2007 Order has to be considered solely by reference to the factual and legal context in 2007. Their entire service was completed before the base was moved from Hong Kong and at a time when the assumption and the reality were retirement to a life in Nepal. The group cannot therefore rely on a relevant change of circumstances since *Purja*. We are bound by the decision of the Court of Appeal in that case.

16. In *Purja*, the claim based on discrimination on the ground of nationality was dismissed because it was held that Gurkha and British soldiers were not in analogous situations. Simon Brown LJ said (at paragraph 60):

"I simply cannot recognise the two groups as being in 'an analogous or relatively similar situation', looking at the nature of the Gurkha Brigade as a whole – the basis and circumstances of the Gurkhas' recruitment, service and discharge."

See also Chadwick LJ at paragraphs 84 and 85. Thus, the claim fell at the first hurdle.

17. In my judgment, the authority of *Purja* is fatal to the case of the pre-1997 group on the nationality issue. I should add that, quite apart from being bound by it, I am quite satisfied that it was correctly decided.

18. In principle, *Purja* is not determinative of the age discrimination case because age was not raised in that case. However, if it had been I have no doubt that it would have been rejected for the same reason, namely the non-analogy. Moreover, as will now become apparent, I am not persuaded that the stronger case of the 1997 transitionals can succeed on the issue of justification and, accordingly, the weaker case of the pre-1997 group is wholly unsustainable.<sup>16</sup>

The BGWS was refused leave to appeal to the Supreme Court. In June 2011, the BBC reported that it was appealing to the European Court of Human Rights:

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<sup>15</sup> [The Court of Appeal decision is R v British Gurkha Welfare Society & Others And Ministry of Defence](#) [2010] ECWA Civ 1098

<sup>16</sup> Ibid

Gurkha soldiers fighting for equal British Army pension rights are taking the case to the European Court of Human Rights. Actress Joanna Lumley helped them win equal rights of UK residence, but veterans are still challenging the Ministry of Defence over pensions. After a defeat in the High Court, the British Gurkhas Welfare Society is taking the case to Strasbourg.

BGWS chairman Tikendra Dal Dewan said: "We have taken this step reluctantly." But he added: "Not pursuing legal options further would effectively put a nail in the coffins of many veterans." Gurkhas who retired before 1997 still get only a third of the pensions received by their British and Commonwealth former comrades, despite winning the right to live in Britain. Around 25,000 veterans are affected. Last year the Court of Appeal rejected the Gurkhas' claim after they lost at the High Court, and the Supreme Court refused them leave to appeal against that decision.

### **'Desperate poverty'**

So they are now taking the case to Strasbourg, claiming their human rights have been breached. Mr Dewan, a former Army major, said: "It is desperately sad that, after many years of committed and courageous service, these old soldiers cannot find justice within the UK's borders - and it should be to the government's shame that the continuing poverty they face goes uncorrected." The Ministry of Defence argued the pension cut-off date was "justified and proportionate". The BGWS said many elderly veterans faced "desperate poverty". The ECHR judges are not expected to consider the claim until late 2012 at the earliest, with no verdict until 2013 or 2014. In May 2009 the then Labour government announced all Gurkha veterans who had served four years or more in the British Army before 1997 would be allowed to settle in Britain.<sup>17</sup>

In July 2018 Defence Minister Mark Lancaster said that legal challenges to the terms of the GOTT had been rejected:

**Dr Matthew Offord:** To ask the Secretary of State for Defence, for what reasons the pension actuarially of Gurkha's who transferred to the Armed Forces Pension Scheme is 23 to 36 per cent for service that took place prior to 1st July 1997.

**Mark Lancaster:** To be eligible for the Gurkha Offer to Transfer (GOTT) in 2007/8, a Gurkha had to have served in the Army on or after 1 July 1997.

The service credits applied under the GOTT to service pre-July 1997 were based on actuarial assumptions calculated by the Government Actuary's Department and accepted by the Ministry of Defence (MOD). This is normal practice across the public services for those transferring between pension schemes.

The assumptions took into account differences in benefit structures between the Gurkha Pension Scheme and the Armed Forces Pension Scheme, including age on joining, length of service and mortality rates.

Legal challenges to the terms of the GOTT, up to the European Court of Human Rights, were rejected, with MOD's view that the transfer terms were fair and reasonable being upheld.

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<sup>17</sup> [BBC News, Gurkhas take British Army pension fight to Europe, 20 June 2011](#)

## 12 Gurkha Pensions

No pension value was removed from any Gurkha as a result of the GOTT.<sup>18</sup>

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<sup>18</sup> [162534, 17 July 2018](#)

## 4. Ongoing campaign

The pension position of Gurkhas who retired before 1 July 1997 has been raised in Parliament on a number of occasions. David Willetts MP presented a petition on Gurkha citizenship and pensions to Parliament on 8 July 2008. This declared that:

...the treatment of Ghurkhas is an ongoing disgrace: Gurkhas who retired from the British Army after 1997 can automatically stay in the UK, but those who retired earlier must apply for citizenship, and many have been refused and face deportation. Pension rights for years served by Ghurkhas before 1997 count at only around a quarter of the level of years served after that time.

<sup>19</sup>

In response the Secretary of State for Defence reiterated the Government's position on the pension rights of Gurkhas in respect of service before 1 July. He added that:

Although some retired Gurkhas have challenged the pension arrangements in relation to the 2007 review, an independent Judicial Review in June 2008 ruled that the Ministry of Defence's position was fair and reasonable.<sup>20</sup>

A Ten Minute Bill - the *Immigration (Discharged Gurkhas) Bill* – was presented to the Commons by Bob Russell MP on 7 May 2008. The aim was to:

amend the immigration rules in connection with the requirements for indefinite leave to enter and remain in the United Kingdom as a Gurkha discharged from the British Army.<sup>21</sup>

A Bill on the same issue was debated in the Lords on 4 July 2008. Introducing the Second Reading debate, Liberal Democrat spokesperson Lord Lee of Trafford said:

Given that record of service to our country, their bravery, dedication and unswerving loyalty, they ask only two things: a decent, fair pension and a right of settlement in the United Kingdom, which is the purpose of the Bill. Surely those are not unreasonable requests.<sup>22</sup>

Responding, Lord Bassam of Brighton explained the Labour Government's position as follows:

...earlier this week in the High Court, Mr Justice Ouseley ruled that the Government's application of the July 1997 cut-off date to pension enhancements for service in the Gurkhas after July 1997, after which there had been an expectation of retiring in the United Kingdom, was reasonable, rational and lawful. That is the approach that the Government want to proceed with. We think that Gurkhas, past and present, have benefited from decent terms and conditions, something that is perhaps evidenced by the intense competition that traditionally accompanies annual recruitment for the brigade. It is not uncommon to have 20,000

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<sup>19</sup> [HC Deb, 8 July 2008; c. 23-4P](#)

<sup>20</sup> [HC Deb, 6 October 2008, P 14-16](#)

<sup>21</sup> [HC Deb, 7 May 2008, c 719](#)

<sup>22</sup> HL Deb, 4 July 2008, c490

applicants competing for approximately 200 places. We think that we have the balance about right.<sup>23</sup>

On 21 May 2009, following the high-profile [Gurkha Justice Campaign](#), including Joanna Lumley, the Home Secretary announced a change in policy on Gurkha settlement rights. Gurkhas who had retired before 1 July 1997 and completed four years' service would have the right to apply to settle in the UK with their spouses and dependent children.<sup>24</sup> However, there had been an agreement among parties to the discussions that there was no direct read across to policy on pensions. The then Home Secretary, Jacqui Smith said:

I hope that the House will understand the importance of maintaining the distinction, upheld by the High Court, between Gurkhas who served before and after 1997. That is why I welcome the agreement of all parties to our discussions that there is no direct read-across between settlement and pension rights. As the Chairman of the Select Committee wrote in his letter to the Prime Minister on Tuesday,

“the question of equalising Gurkha pensions should not and need not be conflated with the debate about settlement”.

On the basis of the measures I have set out today, I am proud now to be able to offer this country's welcome to all who have served in the Brigade of Gurkhas and who wish to apply to settle here. I am sure that all who come here will make the most of the opportunities of living and working in the UK.<sup>25</sup>

A working group was set up to ensure that ex-Gurkhas in Nepal were able to make an informed decision to come to the UK and to make sure the process of settlement was as smooth as possible. It did not look at issues of pension and welfare payments.<sup>26</sup>

The British Gurkha Welfare Society (BGWS) continued to campaign for equal pensions for all Gurkhas:

Although the British public has united unanimously behind the Gurkhas in their campaign for equality of treatment with fellow British soldiers, one area of concern still remains - the fact that all Gurkhas do not receive a fair and equal pension. Gurkhas who retired from the Army prior to 1997 receive a pension settlement between as little as 1/6 or 1/8th of that of the UK soldiers they served alongside.

It said it is not demanding the backdating of any pension payments but that Gurkhas "regardless of when they served" should receive "an equal and fair pension from this point onwards."<sup>27</sup> An [EDM 1726](#) tabled in June 2009 in the name of George Howarth called on the Government to "consider giving all Gurkhas an equal and fair pension in the future."<sup>28</sup>

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<sup>23</sup> HL Deb, 4 July 2008, c503

<sup>24</sup> This is covered in more detail in SN/BT/4399, [Immigration: settlement and British citizenship for discharged Gurkhas and Commonwealth members of the armed forces](#).

<sup>25</sup> [HC Deb, 21 May 2009, c1650](#)

<sup>26</sup> [HC Deb, 27 July 2011, c1065W](#)

<sup>27</sup> [British Gurkha Welfare Society website](#)

<sup>28</sup> EDM 1726 – Session 2008-09; See also [EDM 434 2009-10](#) and [EDM 21 2009-10](#)

The Labour Government estimated the capitalised cost of providing retired Gurkhas with Armed Forces Pension Scheme (AFPS) equivalent pension benefits for all pensionable service before 1 July 1997 as follows:

Mr. Drew: To ask the Secretary of State for Defence how his Department calculated its estimate of the £1.5 billion required to give Gurkhas on the Gurkha Pension Scheme a retrospective pension equivalent to their UK counterparts. [284419]

Mr. Kevan Jones: £1.5 billion is an estimate of the capitalised cost of providing retired Gurkhas with Armed Forces Pension Scheme (AFPS) equivalent pension benefits for all pensionable service before 1 July 1997. The estimate was calculated by the Government Actuary's Department and identifies the additional capitalised cost that would be incurred if benefits of equivalent value to the Armed Forces Pension Scheme were granted for all pensionable service before 1 July 1997, on the same terms as provided for post-1 July 1997 service in the Gurkha Offer to Transfer exercise. The estimated cost is based on the assumptions and methodology applied in the Gurkha Offer to Transfer, and assumes that the profile of Gurkha pensioners and dependants who retired before 1 July 1997 is similar to those that retired post 1 July 1997.<sup>29</sup>

It also argued that figures for the average monthly payment under the Gurkha Pension Scheme and the Armed Forces Pension Scheme were not comparable "because of different lengths of service, different rank structure between the Brigade of Gurkhas and the wider Army and, chiefly, because Gurkhas begin drawing on their pensions much earlier than British soldiers with equivalent service."<sup>30</sup>

The BGWS continues to campaign for equal pensions. Its website says:

The BGWS has since continued to carry the torch for Gurkha welfare and by campaigning for equal pensions is seeking to tackle the immense poverty faced by many within our community both in the UK and in Nepal.

Since the decision on settlement, the BGWS has continued to challenge the Gurkha pensions situation in Westminster, also maintaining a legal challenge that has seen a judicial review and subsequent challenge of its verdict in the Court of Appeal.

Underpinning this activity is a simple fact: at present many Gurkha veterans who retired before 1997 are forced to live in poverty in Nepal, and even when they move to the UK out of financial desperation (possible thanks to the resolution of settlement) are left perilously close to the poverty line, often having left their families behind in Nepal.

Their plight is compounded by the fact that many of these veterans are elderly, sometimes infirm and often lacking the English skills and formal qualifications to make employment possible.

Currently, Gurkhas receive a pension of only £2,150 per year with the many that relocate to the UK being reliant on pension tax credits and State benefits to survive. A pension of £5,000 per year would enable these veterans to live out their lives in comfort and

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<sup>29</sup> [HC Deb 8 July 2009 c789W](#); See also [HC Deb 27 July 2010 c1066W](#)

<sup>30</sup> [HC Deb 8 July 2009 c788-9W](#); See also, [HC Deb 19 Jun 2009 c 512W](#)

without reliance on charity in Nepal with their families, thereby relieving the burden of benefits payments from the UK Government.<sup>31</sup>

The current Government has not indicated that it intends to review policy in this area:

Mr Buckland: To ask the Secretary of State for Defence whether he has discussed with ministerial colleagues the estimated difference in cost to the public purse between providing equal pensions to all Gurkha veterans and providing welfare benefits to Gurkhas who retired before 1997 and are now living in the UK. [32285]

Mr Robathan: My right hon. Friend, the Secretary of State for Defence, has held no discussions with his ministerial colleagues on this subject.<sup>32</sup>

[...]

Jim Shannon: To ask the Secretary of State for Defence what consideration he has given to equalising continuation of services rights for Gurkhas serving in the armed forces; and what discussions he has had on this matter with representatives of Gurkha and former Gurkha groups. [66842]

Nick Harvey: None, because following implementation of the 2007 review of Gurkha Terms and Conditions of Service (TACOS), Gurkhas have served on the same TACOS as the rest of the British Army, including the regulations applying to continuance of service.

A survey of the views of serving members of the Brigade of Gurkhas was conducted during the course of the 2007 Gurkha TACOS review. There was also wide consultation among organisations representing the ex-Gurkha community.<sup>33</sup>

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<sup>31</sup> [British Gurkha Welfare Society – about us](#)

<sup>32</sup> [HC Deb, 10 January 2011, c14W](#)

<sup>33</sup> [HC Deb, 25 August 2011, c1185](#); See also [written evidence from MoD to Gurkha Welfare Inquiry, February 2014](#)



## 5. All Party Parliamentary Group - Gurkha Welfare Inquiry

On 21 November 2013, Gyanraj Rai, a former Gurkha, ended a hunger strike that he had begun on 7 November, over the pension rights of those who retired before 1997.<sup>34</sup> This was in response to an announcement by the All Party Parliamentary Group (APPG) on Gurkha Welfare that it was establishing an inquiry to look at a range of issues, including pensions.<sup>35</sup> A government spokesperson said:

The government was concerned about the welfare of Mr Rai throughout the period of his hunger strike and is glad that he has ended this action. The APPG has offered to hold an inquiry into Mr Rai's concerns and all the relevant government departments will cooperate fully with the review.<sup>36</sup>

The APPG said that its [Gurkha Welfare Inquiry](#) would consider representations on pensions and other issues. It received written evidence and held a series of public hearings between 12 March 2014 and 2 April 2014.

In debate in Parliament on 11 September 2014, chair of the APPG, Jackie Doyle-Price said she wanted to seek the views of the House before the group submitted its report to Parliament. The challenge for parliamentarians was to establish what was fair:

The critical point is about the Gurkha pension and the case for equality. Today's Gurkha soldiers join the British Army with the same arrangements as British soldiers, whereas those who served before 1997 did not. They claim that they are not being treated equally and that there are two classes of Gurkha veteran, whereas the Ministry of Defence states that it has honoured the terms and conditions under which the Gurkhas were recruited. Those positions are both correct, if diametrically opposed, and it is our challenge as parliamentarians to establish what is fair and what our obligations are to these men who served our country, particularly in view of the military covenant, which gives us obligations to all our Army veterans.<sup>37</sup>

She asked the Government to look carefully at the adequacy of the Gurkha pension:

Approximately 20,000 veterans are in receipt of Gurkha pensions. The Gurkha pension scheme was established in 1947 by royal warrant and is the oldest pension scheme in the armed forces. It should be noted that pensions for British service personnel were not introduced until 1975. The scheme was designed to give Gurkhas sufficient to live on in retirement in Nepal and was paid on completion of 15 years' service from the point of exit. That is an important principle to bear in mind. The fact that it was established indicates a desire at the time to do right by Gurkha veterans as they retired to Nepal, recognising that on their return there would be limited employment opportunities. It was, dare I

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<sup>34</sup> BBC News, [Reading Gurkhas on hunger strike over pensions](#), 25 October 2013

<sup>35</sup> BBC News, [Gurkha calls off hunger strike after MPs launch inquiry](#), 21 November 2013

<sup>36</sup> Gov.UK, [New inquiry to look into Gurkha welfare](#), 25 November 2013

<sup>37</sup> [HC Deb 11 September 2014 c1129](#)

say, extremely consistent with our obligations under the military covenant.

The pensioners are today typically on incomes of about £223 a month. We are advised that that can purchase a good standard of living in Nepal, although for those who have settled in the UK it is clearly inadequate. It is those pensioners who believe they should be entitled to the same level of pension as British service personnel. [...]

Clearly, there can be no retrospective change to terms and conditions of employment, but I ask that the Government look carefully at the adequacy of the Gurkha pension, particularly in relation to the Indian Gurkha pension and their additional benefits and the cost of living in Nepal. We want a commitment that that will continue to be held in review.<sup>38</sup>

The APPG was particularly concerned at the position of those veterans who received no pension:

There are a good number of them. Some are veterans of the second world war who left long before the introduction of the Gurkha pension, and in addition some 7,000 veterans receive nothing as they did not complete 15 years of service. We are not satisfied that all those veterans are being treated fairly and we believe that they should be afforded the dignity and honour that service in the British Army should bring.

At the moment, these people are dependent on Gurkha welfare pensions of some £40 a month, administered by the Gurkha Welfare Trust. The all-party group believes that those who were made redundant or unfairly dismissed should have a formal entitlement to a pension, as should those who were medically retired.<sup>39</sup>

She argued that extending to Gurkhas the right to settlement in the UK had had unintended consequences which needed to be addressed:

The pension terms that we give the Gurkhas are generous for living in Nepal, but not for living here, and they now have the right of settlement. That has brought with it some financial incentives to come to this country. We need to look at that issue in a more mature manner, because there is an additional cost to the taxpayer and it is not necessarily good for the welfare of those people if they move here just because it is financially desirable to do so. That brings me to the points that I really want to make. Gurkha pensioners receive an income, but if they move to the UK they have access to pension credit, housing benefit and all our public services. We think that the Government could achieve a revenue saving by spending more on Gurkha pensions, thereby saving on welfare bills. That could make the issue hugely complex, but it brings home one of the unintended consequences of extending the right to settlement.<sup>40</sup>

One issue for consideration was whether Gurkhas should have been able to build up National Insurance (NI) credits:

One aspect that we think worth considering—it might be a solution—is whether Gurkhas should have been able to build up national insurance credits, which would have entitled them to a

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<sup>38</sup> Ibid c1130-1

<sup>39</sup> Ibid c1131

<sup>40</sup> Ibid, c1130

pension. Before 1997, Gurkha soldiers were denied that opportunity. However, Gurkhas were issued with a dummy national insurance number. Many have been surprised subsequently to learn that they have not built up their contributions. Had they been able to do so, they would have generated credits towards a UK state pension, which would have been exportable to Nepal and removed that financial incentive to come here. That would bear examination by the Government; at best it would be revenue-neutral, but it might generate a revenue saving.<sup>41</sup>

Responding to the debate, the then Minister of State for Defence, Anna Soubry, said the Gurkha pension was fair at the time it was established. Successive governments had held to the principle that improvements to pension schemes should not be made retrospectively:

The Government's view is that the Gurkha pension, established in 1947 by the tripartite agreement between the UK, Nepal and India, was fair for the time and did not disadvantage Gurkhas. There are three reasons why I say that. First, although the Gurkha pension was smaller, it was paid for a much longer period. Gurkhas received an immediate pension after 15 years' service, typically in their early 30s. By contrast, British personnel who served less than 22 years prior to 1975 receive no pension. A calculation made in 2009 showed that a Gurkha rifleman who retired in 1994 will have received some £61,000 at 2009 prices by the age of 60—his British comparator will have received nothing at all.

Secondly, the Gurkha pension placed Gurkhas among Nepal's highest earners as a result. Significantly, a retired Lieutenant—a Queen's Gurkha officer—with 24 years of service receives a pension more generous than the salary of Nepal's Prime Minister. Thirdly, over the years Gurkhas' pensions evolved as they benefited from the flexibility built into their terms and conditions. That has meant that we were able to enhance their pensions to suit changing circumstances. Initially, as we have heard, Gurkhas mainly served in the far east, but when they undertook temporary posting to the UK or other overseas locations they were entitled to a cost of living addition. From 1997, when Gurkhas were based in the UK, they received a universal addition regardless of where they then served. Since 2007 Gurkhas joining our armed forces have been placed on an equal footing with the rest of the Army.

The argument has been made by others, and it is the right argument, that all those who receive a pension are bound by the rules of the game. Those who did not serve the requisite period of time or who came to this country on a pre-1997 pension cannot expect their pension arrangements to change. I should add that it would be the same in the case of a British soldier. The legal principle that individuals receive benefits in accordance with the scheme rules is well founded. As we heard, retrospective changes are not good and cannot be right—as is the principle, upheld by successive Governments, that improvements to pensions schemes are not made retrospectively.<sup>42</sup>

However, the Government understood the concerns of Gurkhas who had settled in the UK and found themselves in difficulty. It looked forward to the APPG's report:

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<sup>41</sup> Ibid c1132

<sup>42</sup> Ibid c1153

In conclusion, we believe that the terms and conditions of the Gurkhas were fair but, having said that, we also understand the concerns of those who, having fought for this country, settled here and subsequently found themselves in difficulty. That is why we are so grateful to all those who have participated in the inquiry and we look forward to the report's conclusions. Its focus has been on resolving historical anomalies and that must be right.<sup>43</sup>

## 5.1 Government response

In response to the report of the Inquiry in January 2015, the Government said it would implement a number of measures which would mean greater financial and social support for Gurkha veterans:

### **Government Response to the All Party Parliamentary Group on Gurkha Welfare**

On 30 March 2016, the then Defence Minister Julian Brazier confirmed the Government's position:

**Vivendra Sharma:** To ask the Secretary of State for Defence, what progress has been made on reaching a settlement with Gurkha soldiers who retired before 2000.

**Julian Brazier:** The Government and the people of the United Kingdom hold the Gurkhas in the highest esteem and have done so throughout their 200 years of service to the Crown. Successive Governments have taken steps to ensure that the service provided by Gurkhas is appropriately recognised and reflects the terms and nature of that service, including in relation to pensions.

These sentiments were most recently confirmed in the previous Coalition Government's response to the All Party Parliamentary Group report on historic Gurkha grievances and the statement made by my hon. Friend the former Minister for Defence Personnel, Welfare and Veterans (Ms Soubry) on 29 January 2015 HCWS234.

This reaffirmed successive Governments' long standing approach to public sector pension provisions which is that an individual qualifies for a pension according to the rules of that scheme at the time, and that improvements to public sector pension or compensation schemes should not be introduced retrospectively because of the burden such an approach would place on the Exchequer.<sup>45</sup>

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<sup>43</sup> Ibid c1156

<sup>44</sup> [HCWS234, 29 January 2015](#); The full report is [DEP 2015-0128](#)

<sup>45</sup> [PQ 32156, 30 March 2016](#).

## 6. Armed Forces Compensation Scheme

In 2003 (backdated to 1997), Gurkhas who suffered injury attributable to or aggravated by their scheme were included in the War Pension Scheme and provided with benefits on the same basis as for UK service personnel.<sup>46</sup> They were moved to the Armed Forces Compensation Scheme (AFCS), on the same basis, when this was introduced in 2005 (replacing the War Pension Scheme and attributable benefits paid under the Armed Forces Pension Scheme). The AFCS was set up to provide compensation for injury, illness or death caused by service after 6 April 2005. It covers all members and former members of the Armed Forces, whether Regulars (including Gurkhas) or Reserves.<sup>47</sup> Further information can be found on the [Armed Forces Compensation Scheme](#) page on Gov.UK

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<sup>46</sup> 'A Review of Gurkha Terms and Conditions of Service', Land Forces Secretariat, December 2006, House of Commons Library Deposited Paper 07/776.

<sup>47</sup> [Armed Forces Compensation Scheme. Your Compensation Explained.](#)

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