

By Djuna Thurley

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## The campaign for Gurkha pensions



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## Summary

On 7 August 2021, three members of a group representing Gurkha veterans - Gurkha Satyagraha - went on hunger strike outside Downing Street over differences in pensions between Gurkha veterans and other British veterans.

On [19 August 2021](#), the hunger strike ended as the Government agreed to further talks. Ministry of Defence Officials are to meet the Ambassador of Nepal and the group in September.

This briefing looks at the long-standing campaign for the UK Government to address Gurkha veterans' pensions, including legal challenges, campaign groups, the Gurkha Welfare Inquiry and a review of pension rates.

### Gurkha pension scheme

The [Gurkha Pension Scheme \(GPS\)](#) was based on the Indian Army Model and provided an immediate pension at Indian Army rates to those with at least 15 years' service.

In 2007, following a review of Gurkha terms and conditions of service, the Labour Government set up the Gurkha Offer to Transfer (GOTT). This allowed Gurkhas who had served after 1 July 1997 to transfer that service in the Gurkha Pension Scheme into the Armed Forces Pension Scheme (AFPS).

A year's service after 1 July 1997, counted as a year's service in the AFPS. However, a year's service before that date only counted as a proportion of a year: between 23 and 36 per cent depending on rank. Those who left before 1 July 1997 were not eligible to transfer their pensions.

The significance of 1 July 1997, 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 ([GOTT leaflet](#), 2007, p24).

Successive governments have held the position that the treatment of service before 1997 is justified. This is because the GPS was designed to provide a fair standard of living in Nepal, as traditionally Gurkhas returned there after their service ended. Up until 1st July 1997, the Brigade of Gurkhas was based in Hong Kong, and Gurkhas returned to Nepal after discharge. An immediate pension is also paid from the GPS after 15 years' service, compared to 22 years from the AFPS (See, for example, the December 2020 [GPS consultation](#), and the [Government's response to APPG report in](#) January 2015).

## Gurkha veteran campaigns and legal challenges

The argument that the GPS was designed for retirement in Nepal fails to convince many of the retired Gurkhas who now live in the UK following a change to the immigration rules in 2009. This change to the rules was made following a campaign [supported by actor and campaigner, Joana Lumley](#).

The treatment of Gurkhas' service before 1997 has been challenged unsuccessfully in the courts. In 2016, the European Court of Human Rights, found that although Gurkha soldiers had been treated differently from other soldiers in the British Army, and that this treatment could be regarded as less favourable "[any difference in treatment on grounds of nationality had been objectively and reasonably justified.](#)"

## Gurkha Welfare Inquiry

On 21 November 2013, former Gurkha, Gyanraj Rai, ended a hunger strike that had begun on 7 November, over the pension rights of those who retired before 1997. This was in response the All Party Parliamentary Group (APPG) on Gurkha Welfare announcing that [it would conduct an inquiry](#) to look at a range of issues, including pensions.

The [Gurkha Welfare Inquiry](#) conducted by the APPG in 2014 did not recommend changes to the terms of the GOTT for service before 1 July 1997. For Gurkhas who left before 1 July 1997, it recommended the Government should compare Gurkha Pension Scheme rates with those of Indian veterans "to establish whether the current rates of Gurkha pension are fair."

The Government accepted this recommendation and reaffirmed its commitment to [keep Gurkha pension rates at double those of the Indian Army](#). In December 2020, the Ministry of Defence (MoD) opened a consultation on the [relation between Gurkha and Indian Army pension rates](#). At the heart of this was whether it remained "appropriate and affordable" to double the Indian Army rate, in light of significant increases in GPS pensions since 2000. The consultation closed in March 2021 and the MoD is considering feedback.

## UK-Nepal discussions

In 2016, the Governments of UK and Nepal set up a 'dialogue process' to consider grievances of the Gurkha veteran community, particularly in relation to pensions.

The [Report of the Technical Committee on Gurkha Veterans](#), published in March 2018 was designed to be a baseline for the discussions. The report cited differences between the GPS and AFPS as "a major source of grievance" held by some Gurkha veterans: the low level of GPS pensions and lack of facilities in Nepal had led old and frail Gurkha veterans to migrate to the UK for better living conditions. Many were "living a life of misery even in the UK." The report set out proposals from the veterans to address this. The UK

representative reiterated the policy of successive governments, which was against retrospective changes to public service pensions, and said the changes proposed would not necessarily benefit all Gurkhas.

## Hunger strike in summer 2021

In May 2021, Gurkha Satyagraha, a group representing Gurkha veterans, [wrote to the UK Prime Minister](#), Boris Johnson, calling for the “formation of a committee for dialogue between Nepal and the British government to address the demands of the British ex-Gurkha veterans, particularly equal pensions.” It said:

It has been more than 3 years since the Joint Technical Report on the British Gurkha Case was exchanged between two Governments on 22 March 2018 at Whitehall in London, which was to the basis for a Dialogue to address the main concerns of the British Gurkhas. The Ex British Gurkhas are very concerned about the silence that has prevailed so far.

It warned that if their demands were not addressed, [three of the group would go on hunger strike](#).

On Saturday 7 August, two ex-Gurkhas, Gyanraj Rai and Dhan Gurung, and a widow of a Gurkha, Pushpa Rana Ghale, started a hunger strike outside Downing Street, [saying they were “prepared to die.”](#) On 17 August, Dhan Gurung was taken to hospital after a suspected minor heart attack after 11 days of hunger strike. He returned to the hunger strike the following day.

In a letter to Ben Wallace, Secretary of State for Defence, Shadow Minister for the Armed Forces, Stephen Morgan, urged the Government to meet the veterans and to [“finally bring forward proposals so that we can reach a cross-party agreement on a way forward.”](#) According to news reports, [Ben Wallace](#) had said on 13 August that he was “happy to meet protestors but warned that no government ‘of any colour’ had ever made retrospective changes to pensions like the ones the demonstrators are calling for.”

On 19 August, the [hunger strike ended](#) as the Government agreed to further talks. On the same day, the Ministry of Defence responded to a [petition](#) on the UK Parliament website “demanding all Gurkha veterans are paid an equal pension to other British veterans.” The MoD said that, since the publication of the [report of the Technical Committee](#), it had announced increases in GPS pensions [in March 2019](#). In June 2019, the matter was “discussed between the Prime Ministers of the UK and Nepal in June 2019, when it was confirmed that the pension arrangements raised in the dialogue with Gurkha veterans and the Government of Nepal would not be re-opened.” A [consultation the policy on future increases in GPS pensions](#), to which the Government has not yet responded, was launched in December 2020.

Two campaign groups, Gurkha Satyagraha and Gurkha Equal Rights, welcomed the actions of Defence Minister, Leo Docherty, on the day the hunger strike ended, but [expressed concern](#) at the MoD response to the



petition, which they said clearly indicated that the Government was “not ready to engage the Gurkhas to resolve their substantive demands.”

The [petition](#) has over 100,000 signatures so will be considered for a debate in Parliament.

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# 1 Gurkha Offer to Transfer

## 1.1 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. It provided an immediate pension, at Indian Army rates, to every Gurkha completing at least 15 years' service.

Before July 1997, when the UK became the home base for the Brigade of the Gurkhas, pay was much lower than for the rest of the British Army and pension arrangements entirely different. Gurkhas were recruited at the age of 18. Those who did not progress beyond the rank of corporal served for 15 years. After 15 years, they 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.

This was different to the position for those serving elsewhere in the British Army, where no pension could be paid immediately to soldiers or non-commissioned officers unless they completed 22 years' service. Those who served for less than 22 years, had preserved pension rights (provided they had at least two years' service) which could be drawn from age 60.

The pensions paid from the GPS 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."

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, and their families, spent increasingly large amounts of their time in the United Kingdom and developed contacts and roots here. This was reflected in their pay but their pension arrangements continued as before:

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>

## 1.2 Review of terms and conditions of service

Once Gurkhas became based in Great Britain, there was pressure to bring their terms and conditions into line with British Soldiers. That pressure resulted in a change to the Immigration Rules. With effect from 24 October 2004 any Gurkha with at least four years' service in the British Army and who had been discharged after 1 July 1997 was able to apply for indefinite leave to enter or remain ("ILR/E") in the United Kingdom.<sup>2</sup>

The pension arrangements for Gurkhas were the central issue in an application for judicial review in 2003. This 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>3</sup>

In January 2005, the Labour Government announced a wide-ranging review of all Gurkha terms and conditions of service to ensure that any differences from the wider Army were fair and justifiable. The then Defence Secretary, Geoff Hoon, said:

Gurkha soldiers have spent an increasing proportion of their time in UK since withdrawal from Hong Kong in 1997, and successive amendments to the conditions under which they serve have recognised their changing role, status and personal aspirations. The most recent of these was their inclusion in the new HM Forces Immigration Rule, which took effect from 25 October 2004. This has potentially far-reaching effects on the way we recruit and manage the brigade and care for its serving members, families and veterans.

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<sup>1</sup> [British Gurkha Welfare Society and Others and Ministry of Defence \[2010\] EWHC 3 \(Admin\), paras 9-13](#); The archived MoD website has a section on [Gurkha Pensions](#)

<sup>2</sup> Ibid, para 14

<sup>3</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 \(Admin\)](#)

In addition, some public criticism and unease continues about the remaining differences between Gurkhas' terms and conditions and those of the wider Army. We are therefore anxious to ensure that such differences are absolutely justifiable as well as fully understood and accepted by our Gurkha soldiers and want to ensure that the MoD's position, both legally and morally, is beyond reproach.<sup>4</sup>

## 1.3

### Announcement of the Gurkha Offer to Transfer

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:

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.

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<sup>4</sup> [HL Deb 11 January 2005 c15WS](#)

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.<sup>5</sup>

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>6</sup>

## Significance of 1 July 1997

The date of 1 July 1997 acted as a cut-off for the GOTT in two ways:

- Gurkhas who left before that date were not eligible for the GOTT;
- For those who were eligible, the GOTT treated service before and after 1 July 1997 differently: a year of service in the GPS after 1 July 1997 was converted into a year of service in the AFPS; a year of service before that date,<sup>7</sup> was converted into AFPS benefits at a rate broadly equal to what had been earned in the GPS up to that date.<sup>8</sup>

The reason was that 1 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. An FAQ document said:

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.<sup>9</sup>

Following the introduction of two private members’ bills and a successful campaign including Joanna Lumley,<sup>10</sup> the Government announced a further change to the immigration rules in 2009 to allow Gurkhas who had retired before 1 July 1997 and completed four years’ service the right to apply to settle in the UK with their spouses and dependent children. The then Home

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<sup>5</sup> [HC Deb, 8 Mar 2007, col 142WS](#); ‘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

<sup>6</sup> [HC Deb, 19 July 2007, c33WS](#)

<sup>7</sup> For soldiers who joined before 1 October 1993 and officers who joined before 1 July 1997

<sup>8</sup> [Pensions and offer to transfer to serving and retired Gurkhas](#), MoD, 14 March 2014. p9

<sup>9</sup> [MOD, Gurkha Offer to Transfer Booklet, 2007](#); See also [HC Deb, 4 June 2007, c171W](#); See also, [Letter from Anna Soubry to Jackie Doyle Price, 28 February 2014](#)

<sup>10</sup> [Immigration \(Discharged Gurkhas\) Bill \[HL\] 2007-08; Immigration \(Discharged Gurkhas\) \(No.2\) Bill 2007-08](#)

Secretary, Jacqui Smith, explained that there had been an agreement among parties to the discussions that there was no direct read across to policy on pensions.<sup>11</sup>

## 1.4 Implementation

Legislation to enable the GOTT was included in the [Armed Forces \(Gurkha Pensions\) Order 2007 \(SI 2007/2608\)](#) and the [Armed Forces \(Gurkha Compensation\) Order 2007 \(SI 2007/2609\)](#). The Gurkha Offer to Transfer (GOTT) ran from 21st May 2007 to 29 February 2008.<sup>12</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>13</sup>

Gurkhas with service on or after 1 July 1997 were given an option to transfer to one of the Armed Forces Pension Schemes – the Gurkha Offer to Transfer (GOTT). Depending on their date of joining the army, they could choose to join [Armed Forces Pension Scheme 1975](#) (AFPS 75) or [AFPS 05](#). New entrants on or after 6 April 2006 were not eligible for the GOTT; as both AFPS 75 and [Gurkha Pension Scheme \(GPS\)](#) were by then closed schemes. They therefore joined on AFPS 05 terms.<sup>14</sup>

Under the terms of the GOTT, service before and after 1 July 1997 was treated differently. A year of service in the GPS after 1 July 1997 was converted into a year of service in the AFPS; a year of service before that date,<sup>15</sup> was converted into AFPS benefits at a rate broadly equal to what had been earned in the GPS up to that date. The rate applied varied depending on rank at 1 October 2007 (for example, 36% for a Rifleman, 30% for a Corporal and 29% for a Major).<sup>16</sup>

AFPS 75 has a pension age of 60 (65 for service post April 2006). Because most people cannot serve until that age, an Immediate Pension is available after at least 16 years qualifying service (Officers) and 22 years qualifying service (Other Ranks).<sup>17</sup>

The overwhelming majority of retired Gurkhas did not have enough service to qualify for the payment of immediate benefits in AFPS, as discussed below.<sup>18</sup> This meant that if they transferred to the AFPS, they would receive a

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<sup>11</sup> [HC Deb 21 May 2009 c1650](#)

<sup>12</sup> MoD website, [Q and A for post-February 2008 queries](#)

<sup>13</sup> See also MoD, [Pensions Policy Instruction – Pensions Offer to Transfer to serving and retired Gurkhas](#)

<sup>14</sup> [Pensions and offer to transfer to serving and retired Gurkhas](#), MoD, 14 March 2014. P5

<sup>15</sup> For soldiers who joined before 1 October 1993 and officers who joined before 1 July 1997

<sup>16</sup> [Pensions and offer to transfer to serving and retired Gurkhas](#), MoD, 14 March 2014. p9

<sup>17</sup> [AFPS 75: Your pension scheme explained](#), July 2020, p7

<sup>18</sup> 16 years (officers) or 22 years (other ranks)

preserved pension from age 60.<sup>19</sup> A deduction would be made to reflect the fact that the GPS would continue in payment.<sup>20</sup>

All the 3400 serving Gurkhas chose to transfer and nearly all chose the AFPS. Only 10 stayed in GPS. 90% were eligible for transfer to the AFPS 1975. Of the 2230 eligible retired Gurkhas, 73% chose to transfer. 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>21</sup> The majority are likely to have been of the rank of Riflemen or Corporals (who made up 85% of those receiving GPS pensions).<sup>22</sup>

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<sup>19</sup> [GOTT - a guide to making your choice](#)

<sup>20</sup> [Gurung & Ors \(on the application of\) v Secretary of State for Defence \[2008\] FWHC 1496 \(Admin\) 2 July 2008](#), para 24

<sup>21</sup> *Ibid*, para 22

<sup>22</sup> [HC Deb 8 July 2009 c787W](#)

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## 2 Campaign for change

### 2.1 Overview

There has been a long-running campaign for equal pension rights for Gurkhas in respect of service before 1 July 1997.

This has included legal challenges to the terms of the GOTT, up to the European Court of Human Rights. These were rejected, with MOD's view that the transfer terms were fair and reasonable being upheld.<sup>23</sup>

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>24</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>25</sup>

In its response to the APPG report in January 2015, the Coalition Government said the GPS had been designed to provide a good standard of living in Nepal. Its approach to the issue had been shaped by the long-standing principle against retrospective changes to public service pensions. It accepted the APPG's recommendation to review the level of the Gurkha pension in relation to the rates for Indian veterans, reaffirming its commitment to maintain Gurkha pension rates at double (100%) above the rates of the Indian Army.<sup>26</sup>

In response to PQs, the May Government maintained the position taken by previous governments.<sup>27</sup>

In 2016, the governments of the UK and Nepal agreed to set up a process of dialogue on issues of concern to the Gurkha veteran community, in particular regarding pensions. A dialogue process was launched in 2017, to give Gurkhas the opportunity to outline the basis for their grievances and proposals to address them. The March 2018 report – discussed in section 5 below – published set out proposals for change from veterans and was designed to provide a baseline from which the two governments could consider the issues.<sup>28</sup>

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<sup>23</sup> [PQ 162534 17 July 2018](#)

<sup>24</sup> BBC News, [Reading Gurkhas on hunger strike over pensions](#), 25 October 2013

<sup>25</sup> BBC News, [Gurkha calls off hunger strike after MPs launch inquiry](#), 21 November 2013

<sup>26</sup> [Government response to APPG report](#), Jan 2015

<sup>27</sup> [PQ 32156 22 February 2016](#); [PQ 316435 19 February 2019](#)

<sup>28</sup> [Report of the Technical Committee on Gurkha Veterans](#), March 2018

The Johnson Government states that the Gurkha Pension Scheme is fair and provides a good standard of living:

Jack Lopresti: To ask the Secretary of State for Defence, what steps his Department is taking to ensure that the pensions of Gurkha veterans are equivalent to those offered to other armed service personnel.

Leo Docherty: The Gurkha Pension Scheme closed to new applicants in 2007 and those serving from that date, or those who chose to transfer to the Armed Forces Pension Scheme, receive the same pension rates as all other armed forces service personnel.

For veterans who chose to remain on the Gurkha Pension Scheme it represents a very fair scheme ensuring that Gurkha veterans are provided with a good standard of living. For most Gurkha veterans the Gurkha Pension Scheme provides a pension at least as good, and in many cases better, than that given to the Armed Forces Pension Scheme members with identical periods of service.<sup>29</sup>

## 2.2

## Issues

### How do GPS and AFPS benefits compare?

The campaigners argue that Gurkhas who retired before 1997 receive much lower pensions than their British Army and Commonwealth counterparts.<sup>30</sup>

As at 31 March 2016, the average pension in payment from AFPS 75 for ranks below that of officer was £8,519.<sup>31</sup> The average pension payable from the GPS in 2018 for those ranks which constitute the vast majority (85%) of members was: £3,500 (below Corporal); £3554 (Corporal).<sup>32</sup>

However, comparing the level of annual payments misses differences in ranking structure and pay and between the two schemes, in particular the fact that GPS pensions start much earlier.<sup>33</sup> This was explained in a Parliamentary Answer in November 2008:

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<sup>29</sup> [PQ 27136 5 July 2021](#)

<sup>30</sup> Gurkhas reject welfare report amid claims the MoD 'actively discriminated' against them, GetHampshire.co.uk, 30 October 2014; [British Gurkha Welfare Society website/about us](#) (archived page as at 25 June 2011)

<sup>31</sup> [Armed Forces Pension Scheme – Actuarial valuation as at 31 March 2016. Report on Membership data. Table A11](#)

<sup>32</sup> [Gurkha Pension Scheme. Implementing the 7th CPC. Consultation](#). December 2020, p14; [British Gurkha Pension Policies and ex-Gurkha campaigns](#), Centre for Nepal Studies UK, 2013, p28

<sup>33</sup> [HC Deb 8 July 2009 c787W](#)



Mr. Blunt: To ask the Secretary of State for Defence what pension is payable to a soldier who retired after 22 years in the British Army on 30 April 1997 as a sergeant in(a) a Gurkha regiment and (b) a regiment recruited in the UK.

Mr. Kevan Jones: The comparison requested is not possible as, under the then Gurkha Terms and Conditions of Service, a Gurkha sergeant would not serve beyond the 18-year point. He would have been awarded a pension under the Gurkha Pension Scheme, payable straight away, while his regular Army counterpart would have been awarded a preserved pension under the Armed Forces Pension Scheme 1975 (AFPS 75) payable at age 60. Assuming that both individuals were aged 40 when they left, the ex-Gurkha sergeant would have received 20 years pension before his regular Army counterpart was entitled to receive his pension benefits.<sup>34</sup>

On this basis, the Government has argued that most members of the Gurkha Pension Scheme are better off over their lifetime than if they had always been treated as members of the AFPS. The 2016 judgment of the European Court of Human Rights explained:

70. The Government submitted a report by the Government Actuarial Department (“GAD”) which indicated that most of the applicants would not now be in a significantly better position if they had been treated as if they had always been members of the AFPS. This was because pension payments under the GPS were payable immediately upon retirement, whereas an immediate pension under the AFPS was only payable after twenty-two years’ service and most (non-Gurkha) army personnel did not serve that long. Consequently, most of the applicants would receive pension payments for over twenty-five years before many non-Gurkha soldiers of the same rank and length of service would qualify for any payments under the AFPS. According to the Government, an immediate pension at the age of thirty-three was not necessarily worth less than a larger, deferred pension at the age of 60. In fact, the GAD report indicated that of the 308 applicants the Ministry of Defence had been able to identify, approximately four per cent would have been in a better position had they been treated as members of the AFPS throughout their service. This group mostly consisted of officers, who would have been entitled to AFPS benefits immediately upon retirement.<sup>35</sup>

However, this is based on a comparison of payments from the GPS after 15 years’ service with preserved pension rights in the AFPS payable from age 60.<sup>36</sup> It did not include the fact that the AFPS 75 included provision of an ‘immediate pension’ after at least 16 years qualifying service (Officers) and 22

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<sup>34</sup> [HC Deb 17 November 2008 c1378W](#); [HC Deb 26 November 2008 c1526W](#)

<sup>35</sup> [BGWS & Ors and MoD \[2010\] FWHC 3 Admin](#); See also [Gurkha Welfare Society and Others](#), ECHR, September 2016, para 70; [GAD report for the MoD in relation to the case in the ECHR: British Gurkha Welfare Society and Ors v UK](#). Application no 44818.11, para 1.20 to 1.20

<sup>36</sup> [HC Deb 17 November 2008 c1378W](#)

years qualifying service (Other Ranks). A lump sum equal to three times annual pension (tax free) was also payable.<sup>37</sup> The then Terms and Conditions of Service did not allow Gurkhas to serve that long.<sup>38</sup> The analysis from the Government Actuary's Department found that in those cases where Gurkhas had served long enough for entitlement to an immediate pension "the assessed capital value of the AFPS75 pension benefits is likely to be greater than the assessed capital value of the GPS pension benefits." This applied in 20% of cases – officers and senior non-officers.<sup>39</sup>

The 2013 report from the Centre for Nepal Studies disputed the UK Government's argument that "Gurkhas are better off than the British counterpart in pension terms because they receive pensions after 15 years of service while a British soldier with that period of service receives zero pension."<sup>40</sup> It said like-for-like comparisons did not support this argument. For example:

On completion of 22 years' service, British soldiers qualify for AFPS 75 IP and a tax-free Terminal Grant of 3 times the annual rate of pension. For example, in 1989, a British WOI with 22 years' service used to receive a terminal grant £15,807 (Table 3: £5,269 British WOI's pension per annum x 3 = £15,807). In the case of Gurkha soldiers, the terminal grant is not available under the GPS; instead, the Gurkha WOI with the same length of service received £2,292.84 DCRG and Resettlement Grant in average of £2,000 (which relates to rank and is paid with pension (MOD UK undated-a)).

Even though pensions under GPS have risen fast in the last 10 years, they still remain lower than the pensions under AFPS 75, and significantly lower than the pensions of the British and Commonwealth soldiers. Figure 2 shows that in 2013 British and Commonwealth pensioners receive pensions three times higher than Gurkha pensions under GPS and about twice as high as Gurkha pensions under the AFPS.

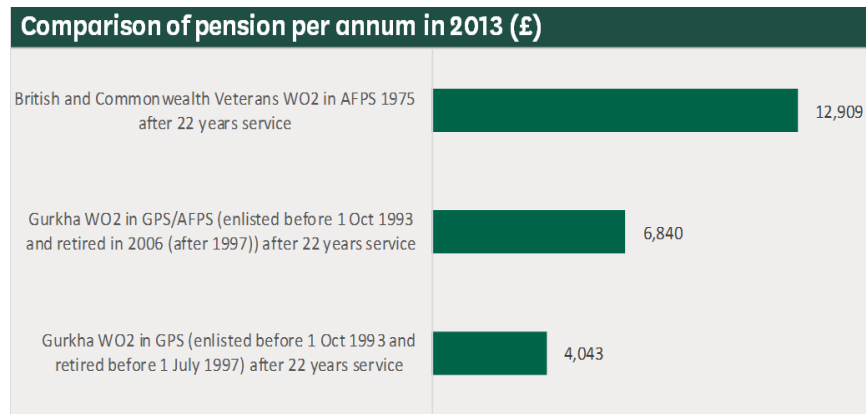
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<sup>37</sup> [AFPS 75 – your pension scheme explained](#), Feb 2015, p3; [GAD report for the MoD in relation to the case in the ECHR: British Gurkha Welfare Society and Ors v UK. Application no 44818.11](#), para 1.20

<sup>38</sup> [HC Deb 17 November 2018 c1378W](#)

<sup>39</sup> [GAD report for the MoD in relation to the case in the ECHR: British Gurkha Welfare Society and Ors v UK. Application no 44818.11](#), para 1.20

<sup>40</sup> [British Gurkha Pension Policies and ex-Gurkha campaigns](#), Centre for Nepal Studies UK, 2013, p28



Source: [British Gurkha Pension Policies and ex-Gurkha campaigns, Centre for Nepal Studies UK, 2013, p28](#)

## Cost estimates

In its evidence to the High Court in 2010, the MoD estimated that providing equivalent service before July 1997 for those eligible for the GOTT (i.e. those with service after 1 July 1997) would have increased its cost from around £150m to £320m:

13. The main reason that MoD would not have agreed to give GOTT to all retired Gurkhas, rather than only those who retired on or after 1 July 1997, is because the cost would have been too great. A pre-1 July 1997 retiree would, of course, have been better off only if the terms of the GOTT had been improved to value all their service as equivalent to AFPS. This offer would then have had to be extended to the serving brigade for their service before 1 July 1997. The cost of giving year-for-year to the eligible group for all their service would have increased from around £150m to £320m [...]. Further, and depending on the assumptions made, for example how far back improved terms were offered, the cost of extending the GOTT in the way described for serving and retired Gurkhas would have run to many hundreds of millions of pounds. It should also be noted that the further back in time any approach is taken the more technically difficult it would be to construct something which is fair to any transferees. These retired Gurkhas would have been drawing their pension over many years. Providing a fair value option is likely to be significantly more complicated than the existing GOTT option which needed to consider only leavers since 1 July 1997.<sup>41</sup>

In 2009, the Government said it 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 at £1.5 billion:

Mr. Drew: To ask the Secretary of State for Defence how his Department calculated its estimate of the £1.5 billion required to give

<sup>41</sup> [BGWS & Ors and MoD \[2010\] FWHC 3 Admin](#), para 24; See also [HC Deb 3 July 2008 c10400W](#)

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>42</sup>

The estimated £1.5 billion (2007 prices) comprised “a one-off payment of £500 million and £50 million each year for 20 years.” <sup>43</sup>

These figures were repeated in the 2016 decision of the European Court of Human Rights in 2016, which said:

[...] the Government have estimated the cost of equalising all years of service prior to 1997 for all Gurkhas serving on that date to be in the region of GBP 320 million, and the cost of extending the GOTT to those Gurkhas who retired before that date (with accrued pension rights valued on a year-for-year basis) to be GBP 1.5 billion over twenty years. <sup>44</sup>

The 2013 Centre for Nepal Studies Report said that while cost would obviously depend on what was offered, there were factors tending to reduce the cost to the taxpayer, particularly taking into account payments already being made by the UK Government:

The UK Government has allowed all Gurkhas with 4 years of service to come to the UK and, by now, most of such eligible Gurkhas or their widows have already come to the UK. As many of these people are above 60 years old with no or little pension, The UK Government is arranging pension credits and housing benefits, adjusting only for any pension they receive. As the pension credit and housing benefits are means-tested benefits, if these people have pensions, AFPS or preserved, equal to their British counterparts, the UK Government would pay proportionately less in pension credit and housing benefits. <sup>45</sup>

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<sup>42</sup> [HC Deb 8 July 2008 c787W](#)

<sup>43</sup> [HL Deb 3 Feb 2010](#)

<sup>44</sup> [Gurkha Welfare Society and Others](#), ECHR, September 2016, para 83

<sup>45</sup> [British Gurkha Pension Policies and ex-Gurkha campaigns](#), Centre for Nepal Studies UK, 2013, p28

It added that the number of Gurkhas in the GPS, and their years of service in it, was decreasing every year.<sup>46</sup>

The Joint Technical Committee on Gurkha Veterans discussed in section 6 below made proposals for change but did not include cost estimates. Since the estimates above were made, as well as changes in scheme membership, there have also be changes in Gurkha pensions, as discussed in section 6 below.

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<sup>46</sup> Ibid

## 3

# Legal challenges to the GOTT

Questions were asked in Parliament about the justification for excluding Gurkhas who left service before 1 July 1997 and the treatment of service before that date.<sup>47</sup> An early day motion with 52 signatures called on the Government to address the issue of Gurkha pension inequality.<sup>48</sup> Gurkhas and their representatives launched legal challenges.

### 3.1

## Gurung and others v MoD (2008)

In June 2008, the High Court heard a legal challenge – Gurung and Others – from a group of retired Gurkhas relating 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>49</sup>

The claimants argued that the terms of the GOTT were irrational, and discriminated against them by comparison with other Gurkhas on the grounds of age, contrary to their rights under Article 14 ECHR (protection from discrimination) and Article 1 of Protocol 1 (protection of property). Dismissing their application for judicial review in July 2008, 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>50</sup>

Evidence to the High Court from the MoD explained the rationale for excluding those who left service before 1 July 1997:

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<sup>47</sup> For example, [HC Deb 3 July 2008 c10400W](#); [HC Deb 8 July 2009 c787W](#); [HL Deb 3 February 2010](#)

<sup>48</sup> [EDM 2027, 2008-09](#)

<sup>49</sup> [Gurung & Ors, R \(on the application of\) v Secretary of State for Defence, \[2008\] EWHC 1496 \(Admin\) 2 July 2008](#), para 24

<sup>50</sup> *Ibid*, para 77

7. In very brief summary, however, Gurkhas were not in an analogous position to the rest of the British Army before 1 July 1997. They were overseas based, in Hong Kong and elsewhere in the Far East, and had little or no opportunity to develop the close physical ties needed to satisfy the immigration regulations. This changed from 1 July when the Gurkhas became UK based. [...]

10. The fact that Gurkhas who left the Army before July 1997 were not covered by the Review meant, for pensions, that the target group for the GOTT was relatively small: there were 3,400 serving Gurkhas and 2,200 who retired on or after 1 July 1997. There are around 25,000 retired Gurkhas in receipt of GPS pension, so the eligible group of retired Gurkhas was less than 10% of the total group.

11. As far as I know, this was the first time a public sector pension scheme had offered to change the terms on which some of its pensioners had left service. Such an exercise to amend past terms and conditions is fraught with difficulty and is not usually done.

12. The GOTT exercise would of course have been very different if all 25,000 retired Gurkhas, most of whom live in Nepal, had been included. The idea of a GOTT for all retired Gurkhas would have been called into question for two reasons - namely significantly increased cost and the difficulty of communications with retired Gurkhas. I deal with each of these below.

### **The cost of equalising pensions for all retired Gurkhas**

13. The main reason that MoD would not have agreed to give GOTT to all retired Gurkhas, rather than only those who retired on or after 1 July 1997, is because the cost would have been too great. A pre-1 July 1997 retiree would, of course, have been better off only if the terms of the GOTT had been improved to value all their service as equivalent to AFPS. This offer would then have had to be extended to the serving brigade for their service before 1 July 1997. The cost of giving year-for-year to the eligible group for all their service would have increased from around £150m to £320m (see paragraph 46 in JF1). Further, and depending on the assumptions made, for example how far back improved terms were offered, the cost of extending the GOTT in the way described for serving and retired Gurkhas would have run to many hundreds of millions of pounds. It should also be noted that the further back in time any approach is taken the more technically difficult it would be to construct something which is fair to any transferees. These retired Gurkhas would have been drawing their pension over many years. Providing a fair value option is likely to be significantly more complicated than the existing GOTT option which needed to consider only leavers since 1 July 1997.<sup>51</sup>

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<sup>51</sup> Evidence to the High Court in *Gurung & Ors*, cited in [British Gurkha Welfare Society and Others and Ministry of Defence \[2010\] EWHC 3 \(Admin\)](#), para 24



## 3.2

### British Gurkha Welfare Society v MoD (2010)

In 2010, the British Gurkha Welfare Society (BGWS) applied to the High Court, seeking to challenge the pension arrangements implemented by the Gurkha Offer to Transfer [GOTT]. The legal challenge related to two groups: i) those who left before 1997 and were not eligible for the GOTT; and ii) those who retired after 1997, but whose service before that date was converted on an actuarial value basis, whereas after that date it was year for year. The challenge was argued on three grounds:

First, it is said that the terms of the GOTT and the Order discriminate against Gurkhas on the basis of age and nationality in the context of Article 1 of Protocol 1 of the European Convention on Human Rights ["ECHR"] in combination with Article 14. Secondly, it is argued that the GOTT and Order are irrational. Thirdly, it is contended that the MoD failed to pay due regard to the need to promote equality of opportunity and good relations between people of different racial groups, as required by section 71 of the Race Relations Act 1976 ["the 1976 Act"].<sup>52</sup>

The application was dismissed by Mr Justice Burnett, for the reasons given by Mr Justice Ouseley in *Gurung*:

Ouseley J was obviously right to concentrate on the rationality in choosing 1 July 1997 as a cut off date for the treatment of pensions in the context of the Article 14 challenge. If that date had failed to satisfy the test of rationality, the GOTT and the Order would have been in legal difficulty. His overall conclusion was that the policy was 'justified and proportionate'. Not only am I not persuaded that Ouseley J was wrong in his conclusions on Article 14 and rationality I have reached exactly the same conclusions essentially for the same reasons. It follows that the challenge based on rationality and age discrimination fail before this Court, as they did in *Gurung*.<sup>53</sup>

The BGWS appealed to the Court of Appeal, where Lord Justice Maurice Kay dismissed the appeal in respect of both groups. Regarding the "1997 transitionals", he said:

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

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<sup>52</sup> [British Gurkha Welfare Society and Others and Ministry of Defence \[2010\] FWHC 3 \(Admin\)](#)

<sup>53</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

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. Commons sense and the passage of time has shown this not to be so.<sup>54</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 [...] 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>55</sup>

The BGWS and others appealed to the European Court of Human Rights.<sup>56</sup> The appeal related to the treatment of pre-July 1997 service for the “1997 transitionals.” They argued that this amounted to unjustified differential treatment on the basis of nationality, in breach of [ECHR art.14](#) (prohibition of discrimination) in conjunction with [Protocol 1 art.1](#) (protection of property).

In September 2016, the ECHR dismissed the appeal, finding there had been no violation of Article 14 read together with Article 1 of Protocol 1. It held that the Gurkha soldiers had been treated differently, but that this was objectively and reasonably justified:

The applicants, two retired Gurkha soldiers and an NGO acting on behalf of Gurkha veterans complained that their pension entitlements had been less favourable than those who had more years of service after 1 July 1997. The Court was satisfied that Gurkha soldiers had been treated differently from other soldiers in the British Army as concerned their entitlement to a pension and that the difference in treatment could be regarded as less favourable.

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<sup>54</sup> [The Court of Appeal decision is R v British Gurkha Welfare Society & Others And Ministry of Defence \[2010\] ECWA Civ 1098](#)

<sup>55</sup> Ibid

<sup>56</sup> [BBC News, Gurkhas take British Army pension fight to Europe, 20 June 2011](#)

Furthermore, in view of the changes to the Gurkhas situation, the Court accepted that by 2007 – the date of the offer to transfer – Gurkha soldiers had been in a similar situation to other soldiers in the British Army.

However, the Court considered that any difference in treatment on grounds of nationality had been objectively and reasonably justified. In particular, the cut-off point, 1 July 1997, for different treatment of accrued pension had not be arbitrary as it represented the transfer of the Gurkha's home base to the UK and therefore the point in time from which the Gurkhas had started forming ties with the country.

Likewise, the Court considered that any difference in treatment based on age had also been objectively and reasonably justified.<sup>57</sup>

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<sup>57</sup> [Case of British Gurkha Welfare Society and Others v United Kingdom. \(Application no. 44818/11\)](#), European Court of Human Rights, September 2016; [ECHR press release, Legislation on Gurkhas' pensions was not discriminatory, 15 September 2016](#)

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## 4 Gurkha Welfare Inquiry 2013

### 4.1 Centre for Nepal Studies UK report

A report by the Centre for Nepal Studies UK in October 2013 said retired Gurkhas did not accept the Government's arguments for the treatment of pre-1997 service:

Today, discontent remains, because the new changes, such as permitting Gurkhas with at least four years of service to settle in the UK, have done little to address the issue of the unequal pensions of retired Gurkhas, the majority of whom are now lawful residents in the UK. The pensions agenda is one of many issues of equity that Gurkha organisations have been raising, but it is clearly the most important in that it affects those who have already retired and are rapidly ageing. In this context, it is relevant to investigate why the UK Government decided to apply the principle of equality v to serving Gurkhas and ignore those already retired. The UK Government argues that the retired Gurkhas' welfare has always been well looked after and that they are not unfairly treated. However, this argument of 'fair' treatment (on the ground that their pensions were pegged to the cost of living in Nepal) now fails to convince with the shift of large numbers of these pensioners to their new home, the UK, since 2004.<sup>58</sup>

It said that for the retired Gurkhas equalising pension rights was a point of principle and the "fundamental human right of 'equal pay for equal jobs or jobs of equal value.'" It concluded that "demands for retrospective compensation may well have a considerable degree of legitimacy and ways need to be found to address the issue."<sup>59</sup>

### 4.2 APPG inquiry announced

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>60</sup> This was in response to an announcement by the All Party Parliamentary Group (APPG) on Gurkha Welfare that it was establishing

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<sup>58</sup> [Gurkha pensions policies and ex-Gurkha campaigns](#). Centre for Nepal Studies, 2013, Exec Summary

<sup>59</sup> Ibid p68

<sup>60</sup> BBC News, [Reading Gurkhas on hunger strike over pensions](#), 25 October 2013

an inquiry to look at a range of issues, including pensions.<sup>61</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>62</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.

## Debate in Parliament – September 2014

In a debate in Parliament on 11 September 2014, chair of the APPG, Jackie Doyle-Price MP 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>63</sup>

She asked the Government to look 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 say, extremely consistent with our obligations under the military covenant.

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<sup>61</sup> BBC News, [Gurkha calls off hunger strike after MPs launch inquiry](#), 21 November 2013

<sup>62</sup> Gov.UK, [New inquiry to look into Gurkha welfare](#), 25 November 2013

<sup>63</sup> [HC Deb 11 September 2014 c1129](#)

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>64</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>65</sup>

One issue for consideration was whether Gurkhas should have been able to build up National Insurance (NI) credits before 1997, which would have helped them build entitlement to a State Pension.<sup>66</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

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<sup>64</sup> Ibid c1130-1

<sup>65</sup> Ibid

<sup>66</sup> Ibid c1132

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>67</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:

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>68</sup>

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<sup>67</sup> Ibid c1153

<sup>68</sup> Ibid c1156



## 4.3

# Government response to the APPG report

The APPG report did not recommend revisiting the treatment of pre-1997 service for the purposes of the GOTT. It did recommend that the British Government consider the current rates of the Gurkha pension in comparison with those of Indian veterans, to establish whether they were fair.<sup>69</sup>

Advocacy group Gurkha Satyagraha said it rejected the report and “called upon Government to end their misery, and give the Gurkhas the pension they feel they deserve - the chief objective of the campaign.”<sup>70</sup>

In its response to the APPG in January 2015, the Coalition Government said the GPS had been designed to provide a good standard of living in Nepal:

The Government believes that the GPS is a generous and fair scheme. It was designed and is maintained to provide Gurkha veterans with a very good standard of living in Nepal. It provides for a full pension on discharge of around £200 per month if a Gurkha has served a full 15 years of service. In contrast a soldier in the British Armed Forces would have had to serve a full 22-year commitment before 1975 to qualify for a pension at the point of discharge.

Its approach to the issue had been shaped by the long-standing principle against retrospective changes to public service pensions, under which individuals qualify pension pensions according to the rules in place at the time they qualify for their pension.<sup>71</sup>

It accepted the APPG’s recommendation to review the level of the Gurkha pension in relation to the rates for Indian veterans, reaffirming its commitment to maintain Gurkha pension rates at double (100%) above the rates of the Indian Army:

**Recommendation. We expect the British Government to consider the rates of pension in comparison with those of Indian veterans to establish whether the current rates of Gurkha pension are fair.**

The Government accepts this recommendation. The Government believes that the current rates of Gurkha pensions are fair. In 2000 Gurkha pension rates were set at double (100% above) the highest band of Indian Army pension rates against which rates of pension for those on the GPS are set. GPS rates are examined at ten yearly intervals when the Indian Government publishes its Central Pay Commission findings. They are also kept under review to ensure that any other changes made to Indian Army pensions are reflected in the

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<sup>69</sup> [Government response to APPG report](#), January 2015

<sup>70</sup> Gurkhas reject welfare report amid claims the MoD 'actively discriminated' against them; Hundreds of members of the Nepalese community marched on Westminster to reject the report that was to investigate alleged injustices against the Gurkha community, [gethampshire.co.uk](#), 30 October 2014

<sup>71</sup> [Government response to APPG report](#), January 2015

GPS. The last Ministry of Defence (MOD) report of 2 March 2009 shows that the majority of Gurkha pensions were already above double the rate of the new Indian Army pensions in 2006. Those pensions that were below double the new Indian Army rates were brought up to that level. The MOD will continue to monitor changes to the Indian Army pension arrangements and alter the GPS accordingly. The Government reaffirms its commitment to maintain Gurkha pension rates at double (100%) above the rates of the Indian Army.<sup>72</sup>

It did not accept a recommendation by the APPG that Gurkhas should be awarded backdated National Insurance credits for service before 1997 to help them build entitlement to the UK State Pension.<sup>73</sup>

There is information on the issues above on the [MoD website](#).

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<sup>72</sup> Ibid

<sup>73</sup> Ibid

## 5

# Report of Committee on Gurkha veterans – March 2018

March 2018 saw the publication of the report of the Technical Committee on Gurkha Veterans. This had been set up in 2016 by the governments of the UK and Nepal to consider grievances of the Gurkha veteran community particularly in relation to pensions. A dialogue process was launched in 2017, to give Gurkhas the opportunity to outline the basis for their grievances and proposals to address them.

The report published in March 2018 was designed to provide a baseline from which the two governments could consider the issues.<sup>74</sup> The report cited differences between the GPS and AFPS as “a major source of grievance held by some members of the Gurkha veteran’s community.” Gurkha veterans called for:

- A full pension for Other Ranks who retired with 22 years’ service, equal to the Immediate Pension their equivalent in the British Army under the AFPS.
- A full pension for those retired as Officers after completing 16 years after the age of 21, equal to the Immediate Pension their equivalent in the British Army receive under the AFPS.
- For Gurkhas with service of between 15 and 22 years, a proportionate amount e.g. for 15 years’ service 15/22nds of the Immediate Pension payable to their counterpart in the British Army.

In each case, it was suggested that the effective date could be 1 April 2017.

The veterans pointed out that for Other Ranks, service beyond 15 years was not an option unless they were promoted. They said the low level of GPS pensions and lack of facilities in Nepal had led old and frail Gurkha veterans to migrate to the UK for better living conditions. Many were “living a life of misery even in the UK.” A sustainable pension would enable a “sizeable chunk” of Gurkha veterans to return home to Nepal.

The UK Government’s representative reiterated its presumption against retrospection in public service pensions and said the changes proposed would

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<sup>74</sup> [Report of the Technical Committee on Gurkha Veterans](#), March 2018

not necessarily benefit all Gurkhas, indeed some could potentially be negatively affected.<sup>75</sup>

## 5.1 Summer 2021 – Hunger strike

Gurkha Satyagraha, a group representing Gurkha veterans, wrote to the UK Prime Minister, Boris Johnson, on 3 May 2021, raising concerns about the lack of progress since the Joint Technical Report was published. It called for the “formation of a committee for dialogue between Nepal and the British government to address the demands of the British ex-Gurkha veterans, particularly equal pension.” If their demands were not addressed, three of the leaders of the campaign would go on hunger strike from 1 July 2021.<sup>76</sup>

On 1 July the group announced that it had postponed this until 21 July, following “written assurance from the Government of Nepal that it would initiate a firm step for direct talks with the British Government in a bid to resolve outstanding Gurkha issues.”<sup>77</sup>

Shadow Minister for the Armed Forces, Stephen Morgan, has urged the Government to meet the veterans and to “finally bring forward proposals so that we can reach a cross-party agreement on a way forward.”<sup>78</sup> Secretary of State for Defence, Ben Wallace, had previously said he was “happy to meet protestors but warned that no government ‘of any colour’ had ever made retrospective changes to pensions like the ones the demonstrators are calling for.”<sup>79</sup>

On 22 July 2021, Gurkhas launched a relay hunger strike, with one campaigner in the strike each day, to last for 13 days.<sup>80</sup> Then, on Saturday 7 August, two ex-Gurkhas, Gyanraj Rai and Dhan Gurung, and one Gurkha widow, Pushpa Rana Ghale, launched a hunger strike, saying they were “prepared to die.”<sup>81</sup> On the evening of 17 August, Dhan Gurung was taken to hospital after not eating for 11 days with a suspected minor heart attack. He returned to the hunger strike the following day.<sup>82</sup> The Nepalese Doctors' Association wrote [an open letter to the Prime Minister](#) on the evening of 17 August expressing concern about the deteriorating condition of the fasting veterans and calling for their pension issues to be resolved swiftly.

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<sup>75</sup> Ibid

<sup>76</sup> [Gurkha Satyagraha to go on a hunger strike from July 1](#), gurkhasatyagraha.org

<sup>77</sup> [Gurkha veterans postpone hunger strike](#), The Himalayan Times, 1 July 2021

<sup>78</sup> [Letter from Stephen Morgan to Ben Wallace, Secretary of State for Defence, 11 August 2021](#)

<sup>79</sup> [Gurkha on hunger strike rushed to hospital after hunger strike 12 days in](#), Daily Mirror, 18 August 2021

<sup>80</sup> [Ex-Gurkhas launch relay hunger strike for pension compensation](#), Gurkha Satyagraha, 22 July 2021

<sup>81</sup> [Gurkha hunger strike outside Downing Street](#), BBC News, 11 August 2021

<sup>82</sup> [Gurkha hunger strike protestor returns to Westminster after heart issue](#), LBC News, 17 August 2021; [Gurkha taken to hospital after 11-day hunger strike](#), *The Telegraph*, 18 August 2021; [Gurkha taken to hospital following Downing Street hunger strike](#), BBC news, 18 August 2021

On 19 August 2021, the hunger strike ended as the Government agreed to further talks. Ministry of Defence officials would meet the Nepali ambassador and the group next month.<sup>83</sup>

On the same day, the Government responded to a [petition on the UK Parliament](#) website calling on it to pay Gurkhas the same pension as other British veterans of the same rank and service. Regarding actions since the publication of the Technical Committee in 2018, it pointed to increases in GPS pensions in March 2019 of between 10% and 34% above the annual inflation rise, and a new £25m investment in medical and healthcare facilities in Nepal for Gurkha veterans.<sup>84</sup> The matter was discussed between the Prime Ministers of the UK and Nepal in June 2019, when it was confirmed that the pension arrangements raised in the dialogue with Gurkha veterans and the Government of Nepal would not be re-opened. The Government had consulted again on future increases in GPS pensions in 2020 but had not yet responded to that consultation.<sup>85</sup> The petition has over 100,000 signatures, so will be considered for a debate in Parliament.

The campaign groups, Gurkha Satyagraha and Gurkha Equal Rights, welcomed the actions of Defence Minister, Leo Docherty, on the day the hunger strike ended – personally presenting each of the hunger strikers with a small glass of orange juice – a symbolic gesture which had been “deeply appreciated.” However, they [described](#) the MoD response to the petition as containing “extremely defective and dangerous connotations” and as indicating inflexibility in terms of responding to the demand for a “Government to Government (G2G) time-lined dialogue to resolve the longstanding substantive issues that have caused so much harm to our community.”

The UK-Nepal Friendship Society also expressed concern about this “crucial early indication of inflexibility in regard to the substantive issues at the heart of the Gurkha pensions dispute.” It made proposals aimed at “maximising opportunities for fair, transparent, successful outcomes from the December talks.”<sup>86</sup>

In debate on 7 September 2021, Defence Minister, Baroness Goldie said the Defence Secretary and the Minister for Defence People and Veterans would “meet Gurkha welfare groups shortly to discuss all welfare concerns.”<sup>87</sup>

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<sup>83</sup> [Gurkha group ends Downing Street hunger strike after talks agreed, BBC News, 19 August 2021](#)

<sup>84</sup> [Enhanced package of support for Gurkha veterans, MoD, 7 March 2019](#)

<sup>85</sup> [Gurkha Pension Scheme: Consultation on implementing the 7<sup>th</sup> Central Pay Commission, December 2020](#)

<sup>86</sup> [Gurkha hunger strike ends in victory — MoD response to parliamentary petition indicates inflexibility of core position. UKNFS responds, August 2021](#)

<sup>87</sup> [HL Deb 7 September 2021 c771](#)

## 6

## Review of GPS rates – December 2020

Gurkhas who left before July 1997 were not eligible for the GOTT and remained in the Gurkha Pension Scheme (GPS). There is information about the scheme on [Gov.UK](#) including a booklet [The Gurkha Pension Scheme: your benefits explained](#).

The GPS is now a closed scheme. The last entrants having joined in 2006 and the last member began receiving their pension in 2013. It currently has around 22,000 pensioner members; around 15,000 service pensioners and around 7,000 widows or family members.<sup>88</sup>

Under the terms of the 1947 Tripartite Agreement, Gurkha pay and pensions were linked to, and derived from, the Indian Army to provide parity of treatment with Indian Army Gurkhas.<sup>89</sup> Because of this, when the Indian Government's Central Pay Commission (CPC) reviews the pay, pensions and allowances of its employees every ten years, the MoD has to consider the implications for the GPS.<sup>90</sup>

In March 2019, the Minister for the Armed Forces announced that, having considered the implication of the Indian Government's 7<sup>th</sup> Central Pay Commission (CPC), it had decided to end the doubling policy (whereby GPS rates were set at double those of the comparable Indian Army rates at the start of each CPC period). Instead GPS rates would be "increased to 140% of the comparable Indian Army rate, with a minimum 10% increase for those pension rates which were already close to or over that value."

However, following representations from Gurkha pensioners, the MoD agreed to consult on the issue. In a consultation document published in December 2020, it explained that the cumulative impact of policy since 2000 had been to significantly increase GPS pensions:

In the period since the Ministerial Examination in 1999, annual inflation increases alone have increased the GPS by 385%. In this same timeframe the Armed Forces Pension Scheme (AFPS) has only increased by around 55%. In 2013, data from the Government Actuary's Department (GAD), prepared for a case at the European Court of Human Rights on Gurkha pensions, shows that around 80% of Gurkhas received the same, or better, value from the GPS over the course of their lives than those in the AFPS with the same rank and length of service. In 2019, GAD was asked to update the 2013 report and this showed that the percentage of those receiving more than

<sup>88</sup> Ibid

<sup>89</sup> [Gurkha Pension Scheme: Implementing the 7<sup>th</sup> CPC. Consultation, Dec 2020](#)

<sup>90</sup> [Gurkha Pension Scheme: Implementing the 7<sup>th</sup> CPC. Consultation, Dec 2020](#)

their direct AFPS counterpart had increased further to around 90% because of the greater rate of growth of the GPS compared to the AFPS.

The cumulative effect of the impact of the policy since 2000 to periodically set pension rates at double the Indian rates, inflation increases and the scale of CPC increases since 2000, means that individual GPS pensioners have seen their pensions increase by between 900% to 1,200% during this period.<sup>91</sup>

The MoD said it had to consider whether it remained appropriate and affordable to simply double the Indian Army rate “in the light of changed circumstances in Nepal and the UK, and where the Indian rates reflect retrospective changes which would not normally have been possible within the United Kingdom, due to the longstanding policy presumption against retrospective changes to pensions in payment.”<sup>92</sup> Its preferred approach was:

- GPS rates are increased to at least 140% of the top comparable Indian Army rate, with a minimum individual increase of at least 10%.
- this equates to increases for Other Ranks (below WO1) of between 10% to 34% and increases for WO1 and Officers of at least 10%.<sup>93</sup>

The effect would be that GPS members would receive at least 40% more as cash pension than the top rate payable to their Indian Army comparator. The Government believed that this met the original purpose of the cash uplift: the objective of matching Indian benefits. The consultation closed on 11 March 2021. The Government is analysing feedback.<sup>94</sup>

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<sup>91</sup> Ibid p14

<sup>92</sup> Ibid p13

<sup>93</sup> Ibid p21

<sup>94</sup> Gov.UK, [Gurkha Pension Scheme: Consultation on implementing the 7th Central Pay Commission](#), 18 December 2020

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