

2007 No. 2608

PENSIONS

The Armed Forces (Gurkha Pensions) Order 2007

Made - - - - *6th September 2007*

Laid before Parliament *10th September 2007*

Coming into force - - *1st October 2007*

The Secretary of State for Defence, in exercise of the powers conferred on him by sections 1(1)(a) and 10(2), (3) and (4) of the Armed Forces (Pensions and Compensation) Act 2004(a), makes the following Order:

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Armed Forces (Gurkha Pensions) Order 2007.

(1) This Order comes into force on 1st October 2007.

(2) In this Order “the AFPS 2005” means the Armed Forces Pension Scheme 2005 established by the Armed Forces Pension Scheme Order 2005(b) and set out in Schedule 1 to that Order.

Amendment of the AFPS 2005 to allow transfer in of members of the Gurkha pension scheme

2. After Part K of the AFPS 2005 insert—

“PART L

GURKHA PENSION SCHEME TRANSFEREES

L.1 Application of Part L: meaning of “Gurkha Pension Scheme transferee”

(1) This Part makes provision in relation to persons who—

- (a) are active members or pensioner members of the Gurkha Pension Scheme on 1st October 2007 or were active members of that Scheme on 6th April 2006, and
- (b) opt to become members of the Scheme on the basis set out in this Part.

(2) In this Part—

- (a) references to the Gurkha Pension Scheme are references to the Gurkha Pension Scheme constituted by the Royal Warrant of 19th December 1949 (see Army Order 151 of 1949), and
- (b) references to a Gurkha ill-health pensioner are to a pensioner member of the Gurkha Pension Scheme who is entitled to a pension under that Scheme by virtue

(a) 2004 c. 32
(b) S.I. 2005/438.

of a health condition corresponding to such a condition as is mentioned in rule D.5(1)(a) or D.6(1)(a).

(3) In these Rules any reference to a “Gurkha Pension Scheme transferee” is a reference to a person who has become a member of the Scheme as the result of this Part.

L.2 Option for active members of Gurkha Pension Scheme to join the Scheme

(1) A person who—

- (a) would be eligible to join the Scheme by virtue of the person’s service in the Brigade of Gurkhas if the person met the condition in rule B.1(b)(i) (which requires that the person’s service begins on or after 6th April 2005),
- (b) meets the condition specified in paragraph (2), and
- (c) has opted to become an active member of the Scheme under the terms of this Part,

is eligible to become such a member under those terms.

(2) The condition referred to in paragraph (1)(b) is that the person has been an active member of the Gurkha Pension Scheme for a period beginning on or after 1st July 1997 and ending with 30 September 2007.

(4) The option must have been exercised by giving notice in writing to the Scheme administrator in such form as the Secretary of State requires on or before 30th September 2007 or such later date as the Secretary of State considers appropriate.

(5) For this purpose the notice is treated as having been given on the date on which it was received by the Scheme administrator.

(6) The option has effect on 1st October 2007 and is irrevocable unless paragraph (7) applies.

(7) This paragraph applies if the Secretary of State gives notice in writing to the person stating that the person may revoke the option by giving notice in writing of the revocation to the Secretary of State before the expiry of the period of 3 months beginning with the date on which the notice is given by the Secretary of State.

(8) If a person revokes an option in accordance with paragraph (7), these Rules apply as if the person had never exercised the option.

L.3 Option for former active members of Gurkha Pension Scheme to join the Scheme

(1) A person who—

- (a) would have been eligible on 6th April 2006 to join the Scheme by virtue of the person’s service in the Brigade of Gurkhas if the person—
 - (i) had met the condition in rule B.1(b)(i) (which requires that the person’s service begins on or after 6th April 2005), and
 - (ii) had not been an active member of the Gurkha Pension Scheme on that date, and
- (b) meets condition A and either condition B or condition C,

may opt to become a member of the Scheme under the terms of this Part.

(2) Condition A is that the person was an active member of the Gurkha Pension Scheme for a period—

- (a) beginning on or after 1st July 1997, and
- (b) ending with a date falling within the period beginning with 6th April 2006 and ending with 30 September 2007.

(3) Condition B is that the person became a pensioner member of the Gurkha Pension Scheme on or before 30 September 2007.

(4) Condition C is that the period mentioned in paragraph (2) during which the person was an active member of the Gurkha Pension Scheme was not less than two years and the person ceased to be an active member of that Scheme at the end of it.

(5) The option may only be exercised by giving notice in writing to the Scheme administrator on or before the closing date.

(6) For this purpose—

- (a) the notice is treated as having been given on the date on which it is received by the Scheme administrator in such form as the Secretary of State requires, and
- (b) the closing date is 31st January 2008, unless the Secretary of State considers that a later date is appropriate and has specified that date in a notice in writing given to the Scheme administrator not later than 31st January 2008, in which case it is the date so specified.

(7) The option takes effect—

- (a) if on the day after the closing date the person exercising the option—
 - (i) is a pensioner member of the Gurkha Pension Scheme other than a Gurkha ill-health pensioner, and
 - (ii) has not reached the age of 65, on the day on which the person reaches the age of 65, and
- (b) otherwise, on the day after the closing date.

(8) The option is irrevocable unless paragraph (9) applies.

(9) This paragraph applies if the Secretary of State gives notice in writing to the person stating that the person may revoke the option by giving notice in writing of the revocation to the Secretary of State before the expiry of the period of 3 months beginning with the date on which the notice is given by the Secretary of State.

(10) If a person revokes an option in accordance with paragraph (9), these Rules apply as if the person had never exercised the option.

L.4 Effect of exercising option under rule L.2 (Gurkha active transferees)

(1) This rule applies if a person has duly exercised the option under rule L.2 and accordingly is eligible to become an active member of the Scheme under the terms of this Part.

(2) The person becomes an active member of the Scheme on 1st October 2007 in respect of the service that the person is in on that day in the Brigade of Gurkhas.

(3) The member becomes entitled to count under the Scheme—

- (a) a period of qualifying service equal in length to the period of qualifying service which the member was entitled to count under the Gurkha Pension Scheme on 30th September 2007 (but not exceeding 35 years), and
- (b) a period of reckonable service equal in length to the sum of—
 - (i) the period of reckonable service which the member was entitled to count under the Gurkha Pension Scheme on that date in respect of service on or after 1st July 1997, and
 - (ii) if the member's service in the Brigade of Gurkhas began before 1st July 1997, the additional period specified in paragraph (4), (5) or (6) in the case of a person of the member's rank on 1st October 2007.

(4) The additional period referred to in paragraph (3)(b)(ii) in the case of a person who is an officer on 1st October 2007 is the following percentage of so much of the member's service as falls before that date—

- (a) in the case of a member then holding the rank of lieutenant, 27%,
- (b) in the case of a member then holding the rank of captain, 28%, and
- (c) in the case of a member then holding the rank of major, 23%.

(5) The additional period referred to in paragraph (3)(b)(ii) in the case of a person who is not an officer on 1st October 2007 and joined the Brigade of Gurkhas before 1st October

1993 is the following percentage of so much of the member's service as falls before 1st October 2007—

- (a) in the case of a member holding the rank of rifleman or lance corporal on 1st October 2007, 36%,
- (b) in the case of a member then holding the rank of corporal, 30%,
- (c) in the case of a member then holding the rank of sergeant, 29%,
- (d) in the case of a member then holding the rank of staff sergeant or warrant officer 2, 27%, and
- (e) in the case of a member then holding the rank of warrant officer 1, 26%.

(6) The additional period referred to in paragraph (3)(b)(ii) in the case of a person who is not an officer on 1st October 2007 and joined the Brigade of Gurkhas on or after 1st October 1993 is a period equal to so much of the member's service as falls before 1st October 2007.

(7) In the case of a member who joined the Brigade of Gurkhas before reaching the age of 17—

- (a) for the purposes of paragraph (3)(a) and (b)(i) the qualifying and reckonable service that the member was entitled to count under the Gurkha Pension Scheme on 30th September 2007 is taken to include the qualifying and reckonable service that the member would then have been entitled to count under that Scheme if the member had then been entitled to count service before reaching the age of 17 ("pre-17 service"), and
- (b) for the purposes of paragraph (3)(b)(ii) and (4) to (6), the same regard must be had to the member's pre-17 service, as to the member's later service.

L.5 Effect of exercising option under rule L.3 (former active Gurkhas)

(1) This rule applies if a person duly exercises the option under rule L.3.

(2) On the effective option date the person becomes entitled to count under the Scheme—

- (a) a period of qualifying service equal in length to the period of qualifying service which the member was entitled to count under the Gurkha Pension Scheme immediately before that date (but not exceeding 35 years), and
- (b) such period of reckonable service as the Secretary of State considers appropriate, after consultation with the Scheme actuary.

(3) On the effective option date—

- (a) the person is treated for the purposes of Part D as if the person had ceased to be in service by virtue of which he was eligible to be an active member of the Scheme before reaching pension age (but subject to rule L.7(1)),
- (b) if immediately before that date the person was a Gurkha ill-health pensioner by virtue of a health condition corresponding to such a condition as is mentioned in rule D.5(1)(a), the person is treated as if he fell within rule D.5(1) (but subject to rule L.7(1)), and
- (c) if immediately before that date the person was a Gurkha ill-health pensioner by virtue of a health condition corresponding to such a condition as is mentioned in rule D.6(1)(a), the person is treated as if he fell within rule D.6(1) (but subject to rule L.7(1)).

(4) Accordingly, on the effective option date—

- (a) if immediately before that date the person was a pensioner member of the Gurkha Pension Scheme, the person becomes a pensioner member of the Scheme,
- (b) if immediately before that date the person was a pensioner member of the Gurkha Pension Scheme but not a Gurkha ill-health pensioner, the person becomes entitled to an annual pension under rule D.2, subject to the provisions of the Scheme,

- (c) if immediately before that date the person was a Gurkha ill-health pensioner by virtue of a health condition corresponding to such a condition as is mentioned in rule D.5(1)(a), the person becomes entitled to an annual pension under rule D.5, subject to the provisions of the Scheme,
 - (d) if immediately before that date the person was a Gurkha ill-health pensioner by virtue of a health condition corresponding to such a condition as is mentioned in rule D.6(1)(a), the person becomes entitled to an annual pension under rule D.6, subject to the provisions of the Scheme, and
 - (e) if immediately before that date the person was not a pensioner member of the Gurkha Pension Scheme, the person becomes a deferred member of the Scheme and (assuming that he reaches the age of 65) will become entitled to an annual pension under rule D.2, subject to the provisions of the Scheme.
- (5) In determining the appropriate period of reckonable service for a member under paragraph (2)(b), the Secretary of State must have regard to—
- (a) the member’s circumstances and marital or civil partnership status,
 - (b) the rights under the Gurkha Pension Scheme that the member would have enjoyed had the member not exercised the option under rule L.3,
 - (c) the payments that have been made to the member under that Scheme by way of pension or lump sum or will be made by the time the member reaches the age of 65, assuming that the member does so, and
 - (d) the period of reckonable service that the member would have been entitled to count under rule L.4 if the member had become an active member on 1st October 2007 having exercised the option under rule L.2.
- (6) If a person who has duly exercised the option under rule L.3 and was not a pensioner member of the Gurkha Pension Scheme dies before reaching the age of 65, these Rules apply as if the person had reached the age of 65 on the date of death.
- (7) In this rule “the effective option date” means the date on which the option takes effect (see rule L.3(7)).

L.6 Pension debit members

- (1) This rule applies if—
- (a) on becoming a member of the Scheme a Gurkha Pension Scheme transferee is a pension debit member, and
 - (b) in the opinion of the Scheme administrator it is necessary for the purpose of giving effect to the pension sharing order to which the member’s rights are subject for some or all of the benefits to which the pension member is entitled under the Scheme to be taken in a different form from that in which the member would otherwise be entitled to take them.
- (2) The Scheme administrator may, after taking advice from the Scheme actuary, make such modifications to the member’s rights as to the form of those benefits as the Scheme administrator considers necessary for that purpose.

L.7 Modifications of Scheme rules in case of Gurkha Pension Scheme transferees

- (1) A Gurkha Pension Scheme transferee who was a pensioner member of the Gurkha Pension Scheme is not entitled to the payment of a lump sum under rule D.2, D.5 or D.6.
- (2) Rule E.6 (reduction in pensions under rules E.1 and E.2 in cases of wide age disparity) does not apply to a pension payable under rule E.1 in the case of a member who was a Gurkha Pension Scheme transferee if the member had been the spouse or civil partner of the person to whom the pension is payable continuously since before the relevant date until the member’s death.
- (3) In paragraph (2) “the relevant date” means—

- (a) in the case of a member who became an active member as a result of exercising the option under rule L.2, 1st October 2007, and
 - (b) in the case of a member who became a member as a result of exercising the option under rule L.3, the date on which that option took effect (see rule L.3(7)).
- (4) Rule F.1(4) (right to transfer payment) applies as if a Gurkha Pension Scheme transferee who was not a pensioner member of the Gurkha Pension Scheme was a former active member of this Scheme.”.

Minor and consequential amendments of the AFPS 2005

3.—(1) The AFPS 2005 is amended as follows.

- (2) In rule A.1(4) (interpretation: general) after the definition of “guaranteed minimum” insert—
“Gurkha Pension Scheme transferee” has the meaning given in rule L.1(3);”.
- (3) In rule A.7(1) (qualifying service)—
 - (a) omit “and” immediately before sub-paragraph (d), and
 - (b) after that sub-paragraph insert—
“and
 - (e) in the case of a Gurkha Pension Scheme transferee, the qualifying service the member is entitled to count under the Scheme under rule L.4 or L.5.”.
- (4) In rule A.8(1) (reckonable service)—
 - (a) omit “and” immediately before sub-paragraph (f), and
 - (b) after that sub-paragraph insert—
“and
 - (g) in the case of a Gurkha Pension Scheme transferee, the reckonable service the member is entitled to count under the Scheme under rule L.4 or L.5.”.
- (5) In rule B.1(a) (eligibility: general)—
 - (a) omit paragraph (a)(i) (the Royal Irish Regiment (Part Time)), and
 - (b) in paragraph (b)(ii) after “Part K (AFPS 1975 transferees)” insert “or Part L (Gurkha Pension Scheme transferees)”.
- (6) In rule B.2(1) (persons with other pension arrangements) at the beginning insert “Except as otherwise provided in these rules,”.
- (7) In rule D.2 (retirement before reaching pension age) at end insert—
“(6) For the application of this rule in the case of certain Gurkha Pension Scheme transferees, see rules L.5 and L.7(1).”.
- (8) In rule D.5 (early payment of benefits: active members with permanent serious ill-health) at end insert—
“(7) For the application of this rule in the case of certain Gurkha Pension Scheme transferees, see rules L.5 and L.7(1).”.
- (9) In rule D.6 (early payment of benefits: active members with significant impairment of capacity for gainful employment) at end insert—
“(5) For the application of this rule in the case of certain Gurkha Pension Scheme transferees, see rules L.5 and L.7(1).”.
- (10) In rule E.6(3) (reduction in pensions under rules E.1 and E.2 in cases of wide age disparity) after “rule K.8” insert “and rule L.7”.
- (11) In rule F.1 (right to transfer value payment) at end insert—

(a) Rule B.1 was amended by article 12(1) of the Armed Forces Pension Scheme etc. Amendment Order 2006 (S.I. 2006/717).

“(7) For the application of paragraph (4) in the case of certain Gurkha Pension Scheme transferees, see rule L.7(4).”.

(12) In rule G.3(4) (option to aggregate earlier membership: previous members of the Scheme)—

- (a) omit “and” immediately before sub-paragraph (b), and
- (b) after that sub-paragraph insert—
 - “and
 - (c) in a case where the later or latest of those periods began in accordance with rule L.4 (or an earlier period included in the later or latest period by virtue of sub-paragraph (a) or (b) did so), any period that the member is entitled to count under that rule.”.

Other minor and consequential amendments

4.—(1) The Armed Forces Early Departure Payments Scheme Order 2005(a) is amended as specified in paragraphs (2) and (3).

(2) In article 3(b) in the definition of “member” omit paragraph (a)(i) (the Royal Irish Regiment (Part Time)).

(3) In article 4 (relevant service) after paragraph (d) insert—

“(e) in the case of any person who is or has been a Gurkha Pension Scheme transferee (as defined in rule L.1(3) of the AFPS 2005), the period of qualifying service he is (or was) entitled to count under rule L.4 of the AFPS 2005.”.

(4) In article 3(1) of the Armed Forces Redundancy Scheme Order 2006(c) in the definition of “member”—

- (a) sub-paragraphs (d) and (e) become sub-paragraphs (a) and (b), and
- (b) in the resulting sub-paragraph (a), omit paragraph (i) (the Royal Irish Regiment (Part Time)).

Signed by authority of the Secretary of State for Defence.

Derek Twigg
Under Secretary of State
Ministry of Defence

6th September 2007

(a) S.I.2005/437.

(b) The definition of “member” in article 3 was amended by article 12(2) of the Armed Forces Pension Scheme etc. Amendment Order 2006 (S.I. 2006/717).

(c) S.I. 2006/55. The definition of “member” in article 3(1) was amended by article 12(2) of the Armed Forces Pension Scheme etc. Amendment Order 2006.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order is made under the Armed Forces (Pensions and Compensation) Act 2004 (c. 32).

Article 1 provides that this Order comes into force on 1st October 2007.

Article 2 amends the Armed Forces Pension Scheme 2005 (“the AFPS 2005”), which was established by the Armed Forces Pension Scheme Order 2005 (S.I. 2005/438) and set out in Schedule 1 to that Order, by inserting a new Part L in that Scheme. Part L enables members and former members of the Gurkha Pension Scheme who were in service on or after 6th April 2006 to exercise options to join the AFPS 2005. There are different options according to whether the person exercising the option is an active member of Gurkha Pension Scheme, a pensioner member of that Scheme or a former active member of that Scheme with at least two years’ service. Such active members become active members of the AFPS 2005, such pensioner members and former active members are generally given rights entitling them to pensions when they reach the age of 65. However, such pensioner members with ill-health pensions become entitled to ill-health pensions under the AFPS 2005 regardless of their age.

Article 3 makes further amendments of the AFPS 2005, as a consequence of the addition of the new Part L, under which members of the scheme within Part L are accorded broadly similar treatment to those who joined from the Armed Forces Pension Scheme 1975. It also removes from rule B.1 (eligibility to be an active member of the AFPS 2005) the reference to the Royal Irish Regiment (Part Time), that Regiment having been disbanded by 31st March 2007.

Article 4 amends the Armed Forces Early Departure Payments Scheme Order 2005 (S.I. 2005/437) which established and sets out the Armed Forces Early Departure Payments Scheme 2005, including qualifying service in the Gurkha Pension Scheme as service that counts for the purposes of eligibility for benefits under that Scheme. It also removes references to the Royal Irish Regiment (Part Time) from that Order and from the Armed Forces Redundancy Scheme Order 2006 (S.I. 2006/55).

A full regulatory impact assessment has not been produced on this instrument as it has no impact on the costs of business, charities or the voluntary sector.

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