

**EXPLANATORY MEMORANDUM TO THE
ARMED FORCES (GURKHA PENSIONS) (AMENDMENT) ORDER 2008**

2008 No. 229

1. This explanatory memorandum has been prepared by the Ministry of Defence (MOD) and is laid before Parliament by Command of Her Majesty. It contains matters of interest to the Joint Committee on Statutory Instruments.

2. Description

2.1 The Armed Forces (Gurkha Pensions) (Amendment) Order 2008 amends the Armed Forces Pension Scheme Order 2005 (SI 2005/438) to permit Gurkhas who have sufficient service to qualify for benefits under the Armed Forces Early Departure Payments Scheme Order 2005 (SI 2005/437) to transfer, with effect from 1 March 2008, from the Gurkha Pension Scheme to the Armed Forces Pension Scheme 2005. Without this amendment, such individuals would be obliged to wait until the age of 65 before they could receive benefits.

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

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

3.1 The JCSI will note that, while this Order features articles which are numerically sequenced, rules referred to in Article 2 of the Order, which contain pension scheme amendments, follow lettered parts. This is unusual for a statutory instrument but is the common form of numbering for pension schemes, and is adopted in these articles because SI 2005/438, and its relevant amending instrument, the Armed Forces (Gurkha Pensions) Order SI 2007/2608, are sequenced in lettered parts.

4. Legislative background

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

4.2 The change in policy to allow Gurkhas, who have traditionally been members of the Gurkha Pension Scheme (“GPS”), to belong to one of the two Armed Forces Pension Schemes (the 1975 or 2005 Schemes) was the subject of a Ministerial announcement on 8 March 2007 (Hansard 8 March 2007, Col 141 WS – 142 WS). The intention is to allow Gurkhas who were in service on or after 1 July 1997 to transfer to one of the two Schemes. As a result, the Armed Forces (Gurkha

Pensions) Order SI 2007/2608 introduced rules allowing Gurkhas with service on or after 6 April 2006 to transfer to the Armed Forces Pension Scheme 2005 (which was introduced by SI 2005/438). This Order makes an amendment in relation to those rules of transfer.

4.3 The Early Departure Payments Scheme Order 2005 SI 2005/437 introduced new arrangements for the payment of benefits to individuals who left the Armed Forces without entitlement to the immediate payment of a pension. The benefits set out in Articles 8 to 10 of that Order are designed to act as a retention tool by providing an incentive to personnel to serve at least 18 years and to at least age 40, and as compensation to those whom the Armed Forces is unable to offer a career through to age 55.

5. Extent

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

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

7. Policy background

7.1 The GPS is designed on the premise that a Gurkha will retire to Nepal and benefits are set accordingly. Once the Brigade of Gurkhas became a UK based Regiment on 1 July 1997, it was necessary to review their terms and conditions of service, including pension provision and it was decided that Gurkhas with service on or after 1 July 1997 were therefore to be given the opportunity to transfer to one of the Armed Forces Pension Schemes (AFPS 75 and AFPS 05). New Gurkha recruits in 2007 were entitled to join AFPS 05 from their date of entry.

7.2 The Armed Forces (Gurkha Pensions) Order SI 2007/2608 introduced the option to transfer to AFPS 05 and is unusual in that it extends the offer to those who have left service, with or without a pension, provided they served on or after 1 July 1997 and were still in service on 6 April 2006 (the date when members of AFPS 75 transferred to AFPS 05 in response to a similar offer to transfer, for members of the armed forces generally).

7.3 The window during which the option for former active members of the GPS could be exercised is set out in Rule L3(6) of the 2005 Scheme Rules (SI 2005/438 (as amended)), and the closing date for exercising the option was amended to 29 February 2008 in the manner prescribed in L3(6)(b).

7.4 Rule L3(7) allows those who left with a GPS disability (ill-health) pension to transfer to AFPS 05 with effect from the day after the closing date for the option (now 1 March 2008) and stipulates that others will not become members of AFPS 05 until they reach the age of 65, which is the preserved pension age for that Scheme. This Order amends that rule to allow individuals who served for at least 18 years with the Brigade of Gurkhas and attained the age of at least 40, and who

would therefore benefit from the provisions of the Armed Forces Early Departure Payments Scheme Order 2005 (SI 2005/437), to become members of AFPS 05 on 1 March 2008. As rule L3(7) was drafted prior to the amendments made by this Order, such benefits would not have arisen until the Gurkha reached the age of 65.

7.5 Historically, Gurkhas did not routinely serve to age 40 but it has been discovered recently that a small number of retired Gurkhas have done so. This amendment makes provision for this group to be placed in the same position as members of AFPS 05 who served in the wider Army, and ensures a fair and equivalent position for Gurkhas.

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

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

It was as part of this wide communication and consultation exercise that the gap in provision was discovered, and the need for this Order identified.

7.7 In order to make the entitlement complete, the Early Departure Payments Scheme Order 2005 SI 2005/437 is being amended to ensure that the relevant service of a former active member of the GPS may be counted as qualifying under that scheme. This will ensure this small group identified above can receive payments under that Scheme.

8. Impact

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

9. Contact

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