



Immigration: settlement and British citizenship for discharged Gurkhas and Commonwealth members of the armed forces

Standard Note: SN/HA/4399

Last updated: 21 July 2009

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Section: Home Affairs Section

Until recently, it was very difficult - if not impossible - for foreign and Commonwealth members of the armed forces and Gurkhas to obtain settlement and British citizenship at the end of their service.

Since October 2004 those with at least four years' service have been able to apply for settlement in the UK following their discharge. Gurkhas, however, could apply only if they were discharged on or after 1 July 1997, or if there were strong reasons for exercising discretion. The policy on Gurkhas was successfully challenged in the High Court in September 2008 in the case of Limbu. [New guidance](#) was subsequently issued on 24 April 2009. Permission to settle in the UK might now be granted if an applicant met one of a number of conditions. These included residence, family ties, awards for gallantry, long service, or a medical condition attributable to service.

At the end of an Opposition Day debate on Gurkha Settlement Rights on 29 April 2009 the Government suffered what was widely perceived as a "defeat". The Home Secretary subsequently [announced](#) a change of policy: all Gurkhas who retired before 1 July 1997 and completed four years' service will now have an unconditional right to apply to settle in the United Kingdom with their spouses and dependent children.

In November 2006 the rules on applying for British citizenship were changed to allow service in HM Armed Forces anywhere in the world to count towards the residency requirement for British citizenship.

Other Library standard notes of relevance to Gurkhas are: SN/IA/4671, Gurkha Terms and Conditions of Service and SN/BT/4375, Gurkha Pensions.

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1 Commonwealth members of the armed forces

Until recently, Commonwealth members of the armed forces had to rely on a concession outside the Immigration Rules in order to obtain Indefinite Leave to Remain in the UK (ILR, sometimes called 'settlement'). This allowed for four years' service in the Home forces to be counted as 'approved employment' in an application for ILR on discharge.¹

Then on 18 October 2004 the Home Office published a new 'HM Forces rule', which incorporated the old 'armed forces concession' into the Immigration Rules and made provision for all those with at least four years' service with HM Forces, and their dependants, to apply for settlement in the UK after discharge.² These provisions now appear as paragraphs 276E-276AC of the Immigration Rules.³

Home Office guidance to officials explains how they will deal with such applications from non-Gurkhas:

7. FOREIGN & COMMONWEALTH NATIONALS (NON-GURKHAS)

The following provision in the Rules replaces what was previously known as the "Armed Forces Concession" under which those without right of abode could apply for settlement on discharge in the UK from the armed forces, on the basis of 4 years approved employment.

7.1 Settlement pre/on entry

The requirements for indefinite leave to enter as a foreign or Commonwealth citizen discharged from HM Forces are:

- (i) the applicant has completed at least four years service with HM Forces; and
- (ii) was discharged from HM Forces on completion of engagement; and
- (iii) was not discharged from HM Forces more than 2 years prior to the date on which the application is made; and
- (iv) holds a valid United Kingdom entry clearance for entry in this capacity.

If requirements (i) (ii) and (iii) are met entry clearance for settlement may be issued, and if the entry clearance is presented to the Immigration Officer on arrival the applicant will be admitted to the UK for settlement.

7.2 On completion of engagement

In (ii) above "on completion of engagement" means that a person was discharged from the armed forces in the normal course of events, after completing the agreed period of service and has been issued with a Certificate of Service.

7.3 Settlement after entry

The requirements for indefinite leave to remain as a foreign or Commonwealth citizen discharged from HM Forces are:

¹ Home Office, *Immigration Directorates' Instructions* ch 15 s 2 para 4 (July 2004 version)

² [House of Commons Paper HC1112](#), October 2004

³ [HC 395 of 1993-94](#), as amended

- (i) the applicant has completed at least four years service with HM Forces; and
- (ii) was discharged from HM Forces on completion of engagement; and
- (iii) was not discharged from HM Forces more than 2 years prior to the date on which the application is made; and
- (iv) on the date of application has leave to enter or remain in the United Kingdom.

If all the above requirements are met settlement may be granted.⁴

Special considerations apply to those who have been discharged for medical reasons.⁵

Unlike most other applicants for settlement, discharged foreign and Commonwealth members of the armed forces (and Gurkhas) and their spouses/civil partners do not have to pass the tests for knowledge of language and life in the UK.⁶ They will however need to meet the requirements if they subsequently apply for British citizenship (see below), unless they are exempt for other reasons.

2 Gurkhas

The *Tripartite Agreement* of 1947 between the UK, India and Nepal on Gurkhas' terms and conditions of service (the TPA) clearly implied that "a Gurkha soldier must be recruited as a Nepali citizen, must serve as a Nepali citizen, and must be resettled as a Nepali citizen".⁷ The TPA has now been amended following the 2007 review of Gurkha terms and conditions of service. Now, although Gurkhas should continue to be selected and recruited in Nepal, and remain Nepalese citizens throughout their service, the practice of compulsory discharge in Nepal is being discontinued.⁸

2.1 Previous rules on settlement

Formerly, Gurkhas could not get Indefinite Leave to Remain (ILR) in the UK when they were discharged from Service. Nor could they benefit from the concession outside the Immigration Rules under which four years' service in the Home forces counted as 'approved employment' in an application for ILR, which in effect applied only to Commonwealth and Irish citizens. Most Gurkhas were also unable to qualify for naturalisation as British citizens, not only because they did not get ILR after their service, but also because the time they spent in the UK was not counted towards the required residence periods.

However, an internal government review of immigration policy with respect to the Gurkhas began in mid 2003. Its scope was outlined in a Written Answer in October 2004:

Miss Widdecombe: To ask the Secretary of State for the Home Department what progress has been made with the review into policy governing the right of Gurkhas to return to this country after completion of service; and when he expects to report on its findings. [130180]

Beverley Hughes [*holding answer 16 September 2003*]: Officials from the Immigration and Nationality Directorate met with officials from the Ministry of Defence on Friday 12 September as part of their review of immigration issues affecting Gurkhas and other

⁴ Home Office *Immigration Directorates' Instructions ch 15* s2A (24 April 2009)

⁵ Home Office *Immigration Directorates' Instructions ch 15* s2A (24 April 2009) part 11

⁶ UK Border Agency, *Knowledge of language and life in the United Kingdom* [undated; viewed 28 April 2009]

⁷ A summary of the Tripartite Agreement is available from the Library on request.

⁸ Army website, *Gurkha Terms and Conditions of Service* [undated; viewed 28 April 2009]

foreign and commonwealth personnel in the armed forces. Their discussion included access to settlement, work permits, naturalisation and welfare issues, including those affecting dependants. They are aiming to conclude their review and report their findings by Christmas.⁹

There was considerable cross-party support for a change in policy so that Gurkhas might be granted ILR in the UK upon discharge from Service. The then Leader of the Liberal Democrats, Charles Kennedy, raised the specific issue of naturalisation applications from Gurkhas at Prime Minister's Questions on 15 September 2004:

Mr. Charles Kennedy (Ross, Skye and Inverness, West) (LD): I am sure that the Prime Minister and the House are well aware of the outstanding contribution that the Gurkhas have made to the British armed forces over many generations. A relatively small number overall of Gurkha soldiers who complete their service in our armed forces here seek British citizenship. Does the right hon. Gentleman agree that their right to be accorded citizenship is long overdue?

The Prime Minister: As I think I said a week or a couple of weeks ago, we are looking into this issue and examining it very carefully. I hope that we will be able to make an announcement on this matter in the next few weeks, but obviously we understand the strength of the case that is being made.

Mr. Kennedy: As the UK chairman of the Gurkhas pointed out to me earlier this week, many of those who are seeking British citizenship would be a positive asset to our country both socially and economically, as they were in the armed forces. The Prime Minister is right to praise our armed forces, not only for the combat tasks they undertake but for their hurricane relief support work and their work saving lives during the floods in Cornwall this summer. Would not it be a great morale boost for the Gurkhas and for the armed forces as a whole if this much respected and decorated regiment were to be acknowledged in that way?

The Prime Minister: Let me take the opportunity to pay tribute to the Gurkhas on my own and the whole House's behalf for the fantastic work that they do. They are an integral part of the British Army, and we are proud to have them with us. Let me reassure the right hon. Gentleman: the issue is not just the Gurkhas themselves, because the strength of that case is clear, but we simply have to examine what consequences there might be of agreeing to that case. We are doing that, and I shall be able to make an announcement in the next few weeks.¹⁰

This issue was also discussed in more depth in two adjournment debates secured by Ann Widdecombe on 6 March 2003 and 14 September 2004. She proposed a scheme for Gurkhas who had served for many years in the UK:

I would propose that any Gurkha who has completed 15 years' service in this country and who applies to either remain, re-enter or be naturalised should be treated on exactly the same basis as anybody else who had been in this country for 15 years would be treated. I do not ask for them to be treated with special favour, but merely to have equality with others who have been in this country for 15 years.

In case there is any suggestion that this would flood the immigration system beyond its capacity to cope, only some 200 to 250 Gurkhas a year complete 15 years' service.

⁹ HC Deb 6 October 2003 c1231W

¹⁰ HC Deb 15 September 2004 cc1262-3

These men are well trained, well disciplined and dutiful, and they would make ideal British citizens.¹¹

In September 2004 Ann Widdecombe also tabled an Early Day Motion supporting a change in policy. It stated:

That this House congratulates Gurkhas serving with British regiments and expresses its gratitude for their contribution to every theatre of war in which British troops have been deployed since 1945; notes however that after 15 years service with the British Army, including active service, Gurkhas have no right to remain in the United Kingdom and that none of their service is taken into account under immigration law in the assessment of an application, either to remain in the United Kingdom or re-enter it after return to Nepal; and calls upon Her Majesty's Government to address this injustice immediately and to take full account of each year of service in any assessment of application for leave to remain, leave to enter or naturalisation.¹²

2.2 The 2004 changes

Following these developments, on 30 September 2004 the then Prime Minister announced that immigration rules would be changed to allow Gurkhas with at least four years of service to remain in the UK following discharge from Service. After being resident for 12 months an individual would then be able to apply for British citizenship (see below).

In a press statement the then Home Secretary, David Blunkett, commented:

Throughout their history, the men of the Gurkha Brigade have shown unquestioning loyalty to the Queen and the people of the United Kingdom. In battle they have distinguished themselves as brave and skilful soldiers in all conditions and all terrains. Their 13 Victoria Crosses and numerous other bravery awards speak for themselves.

I am very keen to ensure that we recognise their role in the history of our country and the part they have played in protecting us. This is why we have put together the best possible package to enable discharged Gurkhas to apply for settlement citizenship. I hope that the decision I have made today will make our gratitude clear.¹³

On 18 October 2004 the Home Office set out the changes to the Immigration Rules with respect to Gurkhas in House of Commons Paper HC 1112. These provisions now appear as paragraphs 276E-K of the Immigration Rules.¹⁴ They form part of the 'HM Forces rule' which incorporates what was previously known as the 'armed forces concession' (see above, p1) into the Immigration Rules and makes provision for all those with at least four years service with HM Forces to apply for settlement in the UK after discharge.

Under the new provisions, indefinite leave to remain in the UK as a Gurkha discharged from the British Army may be granted subject to the following requirements:

1. The applicant has completed at least four years service as a Gurkha in the British Army.
2. The applicant was discharged in Nepal on completion of engagement on or after 1 July 1997.

¹¹ HC Deb 14 September 2004 c1242

¹² EDM 1591, Session 2003-04

¹³ 'Gurkhas allowed to stay in the UK', 30 September 2004

¹⁴ HC 395 of 1993-94, as amended

3. The applicant was not discharged from the British Army more than two years prior to the date on which the application is made.

4. On the date of application the applicant has leave to enter or remain in the UK.¹⁵

If the applicant is outside the UK, they must obtain entry clearance (a visa) in this category before travelling to the UK.¹⁶

The rules for Gurkhas were not as generous as for other foreign and Commonwealth members of the armed forces: Gurkhas were prevented from applying for settlement in the UK if they were discharged on or before 1 July 1997. This cut-off date was imposed because that was the date on which the Brigade of Gurkhas moved their headquarters from Hong Kong back to the UK, following the handover of Hong Kong to China. Prior to July 1997 the Gurkhas had a very limited presence in the UK. An official at the Home Office confirmed:

The cut off date of 1 July 1997 recognises when the Brigade of Gurkhas moved their headquarters from Hong Kong to the UK. Settlement is normally granted on the basis of residence in the UK and so it was considered appropriate to enable all those discharged after this date, and who would have developed close physical ties with the UK through being based here, to be able to apply for settlement.¹⁷

Although the announcement was widely welcomed, the limitations imposed by the cut-off date attracted some criticism. An article from *Agence France Presse* reported:

Gurkhas said they could not wholeheartedly welcome the move because the new provision will apply only to those who were discharged from the forces after 1 July 1997, meaning that around 100 of the estimated 400 Gurkhas currently resident in Britain will not be eligible [...]

Major Tikendradal Dewan, chairman of the Brigade of Gurkhas Welfare Society said: "This is extremely good news in a way but it is not a 100 percent celebration because of the cut-off date. It's difficult to rejoice at the news when we know that something like a quarter of the guys will not benefit from it".¹⁸

This criticism was also echoed by Ann Widdecombe. In an article in *The Daily Telegraph* she commented:

I am pleased and grateful that so much progress has been made but I am very disappointed by the cut-off, which I think will be challenged.

I do not see the moral case for saying that a Gurkha discharged in 1996 after 15 years, during which he may have seen active service, is any less entitled to come here than one discharged a year later.¹⁹

UK Border Agency guidance did allow officials to use their discretion to waive some of the requirements in an individual case – including the 1 July 1997 cut-off date – if there were strong reasons why settlement in the UK is appropriate. This was set out in the March 2008 guidance as follows:

¹⁵ Immigration Rules para. 276I

¹⁶ Immigration Rules para. 276F

¹⁷ Personal communication, 18 October 2004

¹⁸ "Britain extends citizenship rights to Gurkha soldiers", *Agence France Presse*, 29 September 2004

¹⁹ "Gurkhas can apply to be British", *The Daily Telegraph*, 30 September 2004

2.4 Discretion

Where an applicant does not meet the requirement of discharge from the British Army in Nepal after 1 July 1997, or discharge not more than 2 years prior to the date of application, discretion to waive these requirements may be exercised in an individual case if there are strong reasons why settlement in the UK is appropriate. For example, consideration should be given to the following factors:

- Strength of ties with the UK – have they spent a significant time living in the UK, such as a 3-year tour of duty pre-discharge or 3 years living in the UK after discharge?
- Do they have any close family living in the UK? What proportion of their close family are in the UK as opposed to living in Nepal? Do they have children being educated in the UK?
- A chronic medical condition where treatment in the UK would significantly improve quality of life.

The requirements to have completed at least four years service as a Gurkha with the British Army, to have been discharged on completion of engagement, and to hold a valid UK entry clearance or have leave to enter or remain on the date of application should not be waived.

2.3 Court challenge: the *Limbu* case

On 30 September 2008 the Hon Mr Justice Blake issued his judgment on an application for judicial review by a number of retired Gurkhas who had been refused entry to the UK.²⁰ He held that the section of the Government's instructions to officials on the exercise of discretion regarding Gurkhas was unlawful and should urgently be revisited:

The policy under challenge in this case either irrationally excluded material and potentially decisive considerations that the context and the stated purpose of the policy indicate should have been included; alternatively, it was so ambiguous as to the expression of its scope as to mislead applicants, entry clearance officers and immigration judges alike as to what was a sufficient reason to substantiate a discretionary claim to settlement here.

(...)

The court is [...] not determining what the elements of a rational future policy must be, it is merely declaring that given the context, objects and purposes of the discretionary Gurkhas policy, the instructions given to ECOs are unlawful and need urgent revisiting. It is of course for the Home Office to determine what should be done in response to this judgment and take political responsibility for the outcome where it is answerable to the electorate. A fresh look seems particularly appropriate in the light of the evidence about the attitude of the Government of Nepal. I will hear counsel on the appropriate declaration and other terms of relief. It may not be necessary to quash the policy itself if it can still benefit claimants and merely needs supplementing and clarification. The individual decisions in this case, however, could be set aside and re-determined when the Home Office have responded to this judgment within a confined time scale of perhaps three months.

The Home Office will doubtless wish to consult with the MOD, but if Home Office policy to discharged veterans does not impede military effectiveness, and there are no international law or foreign policy constraints, it is difficult to see why the MOD should

²⁰ *R v Secretary of State for the Home Department and ors ex parte Limbu and ors*, [2008] EWHC 2261 (Admin)

not itself welcome clarity and the honouring of a historic debt. The court is conscious that at the heart of military life and the sacrifices that soldiers make in the discharge of their duties is the Military Covenant. This reads:

"Soldiers will be called upon to make personal sacrifices – including the ultimate sacrifice – in the service of the Nation. In putting the needs of the Nation and the Army before their own, they forego some of the rights enjoyed by those outside the Armed Forces. In return, British Soldiers must be able to always expect fair treatment, to be valued and respected as individuals, and that they (and their families) will be sustained and rewarded by commensurate terms and conditions of service".

Rewarding long and distinguished service by the grant of residence in the country for which the service was performed would, in my judgment, be a vindication and an enhancement of this covenant.²¹

The Court also heard that the Home Office had originally wished to be more generous to Gurkhas but that the Ministry of Defence had warned against this, based on its erroneous interpretation both of the international legal obligations and of the position of the Government of Nepal:

It is clear that the gestation of the 2004 policy was prompted by inter-departmental concerns over the case of a former Gurkha Major in the United Kingdom who was facing immigration action to remove him from the United Kingdom, but the immigration Minister on reconsideration concluded that this was not justifiable and wanted to reverse the decision and grant indefinite leave to remain. The MOD was concerned with the implications of such a decision and there were vigorous interdepartmental communication. As the Home Office investigated the reasons for the MOD concerns it concluded that a case based on the requirements of the TPA was misconceived and that there was no rational distinction in immigration law that could be made between soldiers recruited to the Brigade of Gurkhas in Nepal and then based in the United Kingdom and other Commonwealth or Foreign soldiers who served from bases in the United Kingdom. It is also clear that the Home Secretary considered that exceptionally it was necessary to remedy the historic denial to Gurkhas not merely of a right to settlement but any opportunity to apply for it as a matter of concession. This denial of opportunity resulted from reasons wholly outside their control and based on misunderstanding of the international legal obligations. The Secretary of State for the Home Department wanted to be as generous as possible to Gurkha veterans who had performed historic service to this country. He was clearly discouraged from being over-generous in this respect by warnings from the MOD as to the concerns of the Government of Nepal. But the existence of these concerns proved to be misconceived. What the Government of Nepal wanted and indeed has obtained is that during service in the Brigade of Gurkhas, the soldiers remained Nepalese citizens and the links of allegiance to Nepal were not broken.

2.4 Home Affairs Committee

The Home Affairs Committee resolved unanimously to call on the Government to allow those Gurkhas who retired before 1997 the right to live in this country. It took evidence on the issue on 4 November 2008,²² following which the Chairman, Keith Vaz wrote to the Home Secretary to recommend that all former Gurkhas be given settlement rights as soon as possible:

²¹ Paras 69-72

²² Published as [HC 1140-i 2007-08](#)

Letter from Rt Hon Keith Vaz MP, Committee Chairman, to Rt Hon Jacqui Smith MP, Home Secretary.

Dear Jacqui

RE: GURKHAS

The Home Affairs Committee took evidence in a one-off hearing today, Tuesday 4th November, on the rights of Gurkhas to settlement in the UK. We heard compelling testimony from two ex-Gurkha soldiers and from long-standing Gurkha campaigners.

As a result of the evidence we heard today, the Committee has asked me to write to you with the following conclusions, and ask that you take urgent action in response.

1. The Committee considers that the UK owes an historic debt of gratitude to the Gurkhas for their brave, loyal and distinguished service in the defence of this country.
2. The Committee agrees that the current Government policy of distinguishing between those Gurkhas who retired prior to 1 July 1997 - the date on which the base of the Brigade of Gurkhas transferred from Hong Kong to the UK - and those who retired after, has in effect created two classes of Gurkhas. It has also caused considerable personal suffering and hardship.
3. The Committee further concludes that this treatment of the Gurkhas is particularly unfair given the discrepancy with settlement rights afforded to other Commonwealth citizens who serve in our Armed Forces.
4. The Committee therefore urges you to take urgent action, in conjunction with the Ministry of Defence, to redress the currently unfair situation by extending settlement rights in the UK to all former Gurkhas.²³

2.5 April 2009 discretionary criteria

On 24 April 2009, in response to the High Court ruling of September 2008 (see above), the Government announced new discretionary criteria. These were outlined in a UK Border Agency fact-sheet:

What is changing and when?

From 24 April 2009 new criteria will be used to consider applications to settle in the United Kingdom outside of United Kingdom Immigration Rules from former members of the Brigade of Gurkhas (the Brigade).

Why are changes being made?

The High Court in the United Kingdom ruled that the previous guidance was unclear and did not adequately reflect factors relating to length and quality of service in the Brigade.

What are the new discretionary criteria?

Permission to settle in the United Kingdom may be granted if you meet one of the following:

- You spent at least three years continuous lawful residence in the United Kingdom during or after service;

²³ Home Affairs Committee, '[Committee recommends Gurkhas be given settlement rights](#)', 4 November 2008

- You have close family settled in the United Kingdom with whom you enjoy family life within the meaning of Article 8 of the European Convention on Human Rights (ECHR);
- You received a Level 1-3 Award for gallantry, leadership or bravery for service in the Brigade;
- You completed 20 or more years' service in the Brigade;
- You have a chronic/long term medical condition which is attributable to, or was aggravated by, service in the Brigade.

If you do not qualify under any of the above, permission to settle in the United Kingdom may also be granted if you meet any two of the following:

- You were previously awarded a United Kingdom Ministry of Defence disability pension, but no longer have a chronic/long term medical condition attributable to, or aggravated by, service in the Brigade;
- You received a Mention in Despatches (Level 4 Award) for service in the Brigade;
- You completed 10 years service in the Brigade or you served less than 10 years but received a campaign medal for active service in the Brigade.

What about my relatives?

If your application were successful, discretion to settle in the United Kingdom would normally be extended to close family (including any wife or dependent children) with whom you enjoy family life within the meaning of Article 8 of the ECHR...²⁴

Revised UKBA guidance for officials was issued in April 2009 providing more detailed background and information.²⁵

The announcement attracted some criticism. A BBC article, for example, reported that:

Campaigners have reacted with anger to new rules on the eligibility of Gurkha veterans to live in the UK.

The Home Office said that new rules would allow about 4,300 more to settle, but the Gurkha Justice Campaign said it would be just 100.

Actress Joanna Lumley, a campaigner for the Gurkhas, said the announcement made her "ashamed of our administration".

Immigration Minister Phil Woolas denied he had betrayed the Gurkhas, adding: "This improves the situation."

He said: "It has never been the case that all Gurkhas pre-1997 were to be allowed to stay in the country. With their dependants you could be looking at 100,000 people.

"It's simply not true that we have betrayed the Gurkhas. When people read the guidelines they will see the sense of them."

²⁴ UKBA, *Settlement in the United Kingdom: Immigration discretions for former brigade of Gurkha members*, 24 April 2009

²⁵ See below, Annex A

In September 2008, the High Court ruled that immigration rules denying Gurkhas who retired before 1997 - about 36,000 - an automatic right to stay in the UK were unlawful.

Peter Carroll, from the Gurkha Justice Campaign, said the fight to allow them to stay in this country would continue with renewed vigour.

He added: "The one group of people that has never let this country down has been let down today in a manner which is truly appalling."

David Enwright, a solicitor representing the Gurkhas, said: "This government, Mr Woolas, should hang their head in shame so low that their forehead should touch their boots.

"This is a disgrace and a betrayal of our armed forces and our veterans."

Dhan Gurung, the first ex-Gurkha to be elected as a councillor in the UK, said the announcement was "insulting to loyal Gurkhas".

He added: "If they want Gurkha soldiers, they should treat them equally."

But Prime Minister Gordon Brown insisted the new rules were fair and took into account "the responsibilities we have accepted" towards the Gurkhas.

"To go back 20 years from 1997 is something that's a major change in policy and will help a large number of Gurkhas if they wish to make the decision to come to Britain," he said.

"And remember that there are costs involved in that decision that we have got to meet."

(...)

...Ms Lumley, whose father served with the Gurkhas, said most Gurkhas would not have been allowed to stay in the UK for three years or have gained a bravery award.

She added that only officers would have achieved 20 years of service, and that it would be near-impossible for troops who served in the 1950s and 1960s to prove that their medical conditions were caused by their time in the forces.

"They've given five bullet points that virtually cannot be met by the ordinary Gurkha soldier," she said.

"It is so obvious that the treatment of the Gurkhas has been a huge injustice," she said.

"To treat them like this is despicable."

The Home Office said that as a result of the decision, a total of 4,300 Gurkhas who served prior to 1997 would be eligible for residency.

A spokesman added there were currently 1,300 applications outstanding, 300 of which would now be granted.²⁶

²⁶ ["Fury over Gurkha settlement plan"](#), *BBC online*, 24 April 2009

2.6 The parliamentary vote

On 29 April 2009 an Opposition Day debate was held on Gurkha Settlement Rights.²⁷ The House debated the following Motion, tabled by the Liberal Democrats:

That this House regrets the Government's recent statement outlining the eligibility criteria for Gurkhas to reside in the United Kingdom; recognises the contribution the Gurkhas have made to the safety and freedom of the United Kingdom for the past 200 years; notes that more Gurkhas have laid down their lives for the United Kingdom than are estimated to want to live here; believes that Gurkhas who retired before 1997 should be treated fairly and in the same way as those who have retired since; is concerned that the Government's new guidelines will permit only a small minority of Gurkhas and their families to settle whilst preventing the vast majority; further believes that people who are prepared to fight and die for the United Kingdom should be entitled to live in the country; and calls upon the Government to withdraw its new guidelines immediately and bring forward revised proposals that extend an equal right of residence to all Gurkhas.

In his speech introducing the motion Chris Huhne referred to disagreements about the actual numbers who would be eligible under the April 2009 discretionary criteria:

The Government say that 4,000 ex-Gurkhas and 6,000 spouses and children will be able to enter—in other words, a total of 10,000 people. Lawyers acting for the campaign say that, to their knowledge, the total would be more like 100. What if we were to extend the pre-1997 rights on a equal footing with those after 1997? The Minister is on record as saying that 100,000 people could enter.

Who should we believe? When I was an economic journalist, I was always very suspicious of well rounded numbers, and hon. Members may note that the Minister's estimate of our proposed policy is precisely 10 times as big as his estimate of his own policy—which, in turn, is a nice round 10,000. Let no one accuse the Home Office of failing to decimalise.²⁸

Replying to Mr Huhne, the Minister for Borders and Immigration, Phil Woolas, emphasised that

It was never the case that Gurkhas joining up did so in the belief or expectation that they would get settlement rights. There was no expectation that they would be permitted to settle in the United Kingdom on discharge, and that was not part of the terms and conditions under which they enlisted.²⁹

He went on to rebut “the accusation that, somehow or other, the Government have not treated the Gurkhas fairly or properly” by listing what the Government had done since 2004 to bring the Gurkhas' treatment into line with that of Commonwealth soldiers.

Speaking for the Conservatives, Damian Green confirmed that

A Conservative Government would make a presumption that Gurkhas who left the service before 1997 would be allowed to settle in this country. (...) We would create a new tier for which people would qualify simply by having served the British armed

²⁷ [HC Deb 29 April 2009 cc890-931](#)

²⁸ [HC Deb 29 April 2009 c894](#)

²⁹ [HC Deb 29 April 2009 c900](#)

forces. I think we all agree that we owe those people a debt, and the vast majority of those who would benefit from that category would be pre-1997 Gurkhas.³⁰

In his summing-up speech Kevan Jones, Parliamentary Under-Secretary of State for Defence, touched on another issue raised during the debate, the number of pensioners in Nepal:

There are 26,000 Gurkha pensioners in Nepal. My right hon. Friend the Member for Leicester, East (Keith Vaz) asked how we know how many there are; we know because we are paying them pensions. Some £54 million is therefore going into the Nepalese economy. The DFID budget is only £56 million. Some have suggested that taking that money out of the Nepalese economy will have no effect, but that is definitely not the case. It is important to recognise that the service pensioners whom I met last week would not claim that they did not have a good standard of living.³¹

At the end of the debate the Liberal Democrat motion was carried by 267 votes to 246.³² Although the vote was not binding on the Government, political commentators were quick to interpret it as “Mr Brown’s first significant defeat as Prime Minister”.³³ Later that day Phil Woolas returned to the House to make a statement:

(...) we recognise the strong feeling in all parts of the House on this subject. As was recognised in the debate this afternoon, this is a complex issue with wide-ranging implications. The cost of implementing the decision of the House of Commons could well run into billions of pounds. The Government also have an obligation to consider the precedent for future decisions on other immigration categories, and wider Government policy. We cannot, therefore, responsibly or fairly rush into the formulation of new policy. We can and do commit to immediate action on individual cases, and we are setting a clear time frame for the next stage of the reform.

In light of the decision of the House, I am bringing forward the date for the determination of the outstanding applications to the end of May. That will ensure that those who qualify under the guidelines now in force get confirmation of that as soon as possible, and we will report to the House the outcome of this work. In addition, based on that work, and recognising the strong feeling of the House, we will come forward with proposals for the next stage of our reform of the rules, to ensure that the Government continue to deliver a fair outcome for ex-Gurkhas and their families. We will publish this next stage before the summer recess.³⁴

2.7 The announcement of May 2009

On 21 May 2009 the Home Secretary announced a revision of the rules on Gurkha settlement rights:

The Secretary of State for the Home Department (Jacqui Smith): With permission, Mr Speaker, I would like to make a statement on new settlement rights for former Gurkhas and their families.

As the House knows, all Gurkhas who retired after July 1997, when the Brigade was relocated to the UK from Hong Kong, are already eligible to settle here under current immigration rules. Since 2004, more than 6,000 Gurkhas and their families have done so.

³⁰ [HC Deb 29 April 2009 c909](#)

³¹ [HC Deb 29 April 2009 c925](#)

³² [HC Deb 29 April 2009 c927](#)

³³ E.g. [“Brown defeated over Gurkha rules”](#), *BBC News Online*, 29 April 2009

³⁴ [HC Deb 29 April 2009 c988](#)

On 29th April, hon. Members of all parties made clear their view that the Government should reconsider plans to increase by 10,000 the number of Gurkhas and family members who could come to the UK to live. As my hon. Friend the Minister for Borders and Immigration set out in his statement to the House that evening, we undertook to respect the will of the House and introduce revised proposals. I am most grateful to my hon. Friend for the work that he has led to deliver that commitment. I am also grateful to the members of the Home Affairs Committee and the Gurkhas' representatives, who have helped us to establish the basis for the proposals.

Our policy will be put into effect through guidance, which we will publish shortly, having first shared it in advance with the Select Committee and Gurkha representatives to seek their views.

Our new guidance will reflect the will of the House, while remaining affordable and consistent with our broader immigration policy. All former Gurkhas who retired before 1997 and who have served more than four years will now be eligible to apply for settlement in the UK.

Gurkha representatives have indicated that it will take time for former Gurkhas and their families to make their applications. I welcome the willingness of the representatives to set up a form of resettlement board to assist the process of their integration into British life.

On the basis of the figure of 10,000 to 15,000 main applicants that Gurkha representatives have suggested, I expect to be able to welcome them and their families over the course of the next two years. I am making resources available in the UK Border Agency to do that, and I am making it clear that there should be no time limit on those applications. The Select Committee has recommended that former Gurkhas should be entitled to bring with them their spouses and dependent children under the age of 18. I am pleased to accept that recommendation.

The 1,400 or so outstanding applications for settlement that are now being considered by the UK Border Agency will be processed on the basis of the policy I am announcing today. I have instructed the UK Border Agency to process all those cases, as a matter of urgency, by 11 June, but I expect to complete the work earlier.

The guidance recognises the unique nature of the service given to the UK by the Brigade of Gurkhas. It is offered to them on an exceptional basis.

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

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

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

I am delighted that we have now been able to agree—across Government, across the House and with the Gurkhas' representatives—new settlement rights, which all those who have served us so well so highly deserve.³⁵

The new policy was also announced by way of a UKBA press notice:

All former Gurkhas who have served in the British Army for at least four years will now be eligible for settlement in the United Kingdom, the Home Secretary announced in Parliament today.

Under the new policy, those Gurkhas who retired before 1 July 1997 and completed four years' service can apply to settle in the United Kingdom with their spouses and dependent children.

The policy introduced today refers specifically to those Gurkhas who retired before 1 July 1997, and who will now be granted settlement rights under the new scheme. Those who retired after 1 July 1997 are already eligible to apply for settlement under the current immigration rules.

Home Secretary Jacqui Smith said:

'Generations of Gurkhas have served the United Kingdom with great courage, sacrifice and distinction, and they continue to make a vital and valued contribution to our operations around the world.

'We respect the will of the House of Commons on this issue, and that is why I have now announced a new policy, the basis of which we have worked on with the Home Affairs Select Committee and Gurkha representatives.

'This means we can now welcome any Gurkha who has served for four years or more to settle in the United Kingdom.'

In 2004 the Government granted the first Gurkhas the right of settlement in Britain if they served on or after 1 July 1997 - the point at which the Brigade's base moved to the United Kingdom. Since then, over 6,000 Gurkhas and their families have been given the right to live in the United Kingdom.

The new policy announced will allow settlement rights to be granted to all those who retired from the Brigade of Gurkhas prior to 1 July 1997 with four or more years' service. The new policy reflects the fresh advice of the Home Affairs Select Committee around the number of Gurkhas and their families who are likely to apply under the new rules.

The British Army's Brigade of Gurkhas is currently around 3,800 strong. It provides around three per cent of the Army's strength and eight per cent of the Infantry.

Kevan Jones, Minister for Veterans, said:

'The British Army and the Ministry of Defence are determined to do all that we can to uphold our ongoing commitment to the welfare of former Gurkhas, whether in Nepal or the United Kingdom. We value greatly the bravery, commitment and dedication which they have shown over many years and continue to demonstrate on operations today.'³⁶

³⁵ [HC Deb 21 May 2009 cc1649-50](#)

³⁶ UKBA press release, [Gurkhas are given right to settle in the United Kingdom](#), 21 May 2009

An official at the UK Border Agency has stated that the new policy is being implemented through Annex A to [chapter 15 section 2A of the Immigration Directorates' Instructions](#).³⁷ The Annex explains that:

In May 2009 the Home Secretary announced that any Gurkha with more than four years service who had been discharged from the Brigade of Gurkhas before 1 July 1997 would be eligible for settlement in the UK.

Applications from former members of the Brigade of Gurkhas discharged before 1 July 1997 should be considered for the exercise of discretion under this guidance. These discretionary arrangements are supplementary to the existing provisions of the Immigration Rules.

This scheme recognises the unique nature of the service given by the Brigade of Gurkhas and is offered to them alone on an exceptional basis. It applies to those who served in the Brigade of Gurkhas from January 1948 when it became part of the British Army. Applications from former Gurkhas who were discharged before January 1948 should be considered on a case by case basis.

Discretionary settlement criteria

Settlement applications from former members of the Brigade of Gurkhas who were discharged before 1 July 1997 will normally be approved, provided the former Gurkha served for at least 4 years in the Brigade.

It is only where adverse information of a serious nature is received about the applicant - for example, evidence of any serious criminal activity - will the application normally be refused. In cases where there is evidence of serious criminal activity the normal threshold should be met in order for the case to be considered for refusal of settlement. That is a custodial sentence of at least 12 months if the offence was committed in the UK or, if committed outside the UK, the offence would have been punishable by a custodial sentence of at least 12 months if it had occurred within the UK. Cases where such information comes to light should be referred by caseworkers in the normal way.

Should an application be received from a former member of the Brigade of Gurkhas who is in receipt of a MoD disability pension, or who has a level 1 -3 award for gallantry but who has served less than 4 years' in the Brigade, discretion should normally be exercised and the settlement application approved.

Dependants

Discretion will normally be exercised and settlement granted in line with the main applicant for spouses, civil partners, unmarried and same-sex partners and dependant children under the age of 18.

Children over the age of 18 and other dependant relatives will not normally qualify for the exercise of discretion in line with the main applicant and would be expected to qualify for leave to enter or remain in the UK under the relevant provisions of the Immigration Rules...

3 Naturalisation applications

Until 2006, members of the armed forces who wanted to apply for naturalisation as British citizens could not count their service abroad towards the residence requirements.

³⁷ Personal communication 13 July 2009

The *British Nationality Act 1981* states that a person applying for naturalisation

- must have been in the UK on the date five years before his application,
- must not have been absent for more than a specified number of days, and
- during the last of those years must not have been subject to any restriction on the period for which he can stay in the UK.³⁸

Some people are treated for nationality purposes as being absent from the UK even when they are physically present here.³⁹ People who are exempt from immigration control (which includes Gurkhas and other members of the armed forces)⁴⁰ and their families fall into this category. However, the Home Secretary has the power to waive any such 'technical absences'. It used to be that he would not do so in favour of Gurkhas and other members of the armed forces. The policy on this was then changed in November 2006:

To reflect the commitment and sacrifice made by serviceman from outside the UK in the British forces, they will now be eligible to apply for citizenship despite having been stationed abroad for the majority of their service.

Under the new rules they will no longer be required to complete five years residency in the UK (three years if married to or the civil partner of a British citizen) before applying to become a British citizen. Instead time spent serving anywhere in the world will be counted towards the residency requirement.

[...]

Serving members of the Brigade of Gurkhas will continue to be treated in accordance with the British Government's long-standing agreement with the Government of Nepal that they must remain Nepalese citizens until they leave the Brigade of Gurkhas. After they have left the Brigade however they will be able to count their Armed Forces service, at home or abroad, towards their application for UK citizenship.⁴¹

More details are given in the Home Office's guidance for caseworkers, the *Nationality Instructions*.⁴²

The Home Secretary retains a large degree of discretion over nationality applications, and can still refuse any naturalisation application if he is not satisfied that the applicant 'is of good character' or simply 'if he thinks fit'.⁴³

All the rules on applying for naturalisation are likely to be changed in 2009: the *Borders, Immigration and Citizenship Bill [HL]*, which is now passing through the Commons, will implement the Government's proposals for 'earned citizenship'. Information on the proposals is provided in two Library standard notes, SN/HA/4824 [Background to the draft \(partial\) Immigration and Citizenship Bill](#) and SN/HA/4872 [Draft \(partial\) Immigration and Citizenship Bill: an analysis](#).

³⁸ *British Nationality Act 1981* Sch 1 para 1(2)

³⁹ 1981 Act Sch 1 para 9(1)(a)

⁴⁰ *Immigration Act 1971* s8(3) and (4)

⁴¹ Home Office press notice, [New citizenship rights for members of the Commonwealth serving in the British Armed Forces](#), 23 November 2006

⁴² See below Annex B

⁴³ 1981 Act s6 and Sch 1 para 1(1)(b)

Annex A

Revised UKBA guidance (April 2009) for officials provided more detailed background and information on the discretionary criteria announced in April:

Discretionary arrangements for Gurkhas discharged before 1 July 1997 or more than two years prior to the date of application

Policy Background

3.1 Applications from former Gurkhas which do not meet the requirement in the Rules for discharge to have occurred on or after 1 July 1997, or within two years of the application date, should also be considered for the exercise of discretion under this guidance. It should be noted that these discretionary arrangements are to be regarded as supplementary to the separate provisions that already exist within the Immigration Rules. For instance, for spouses of persons present and settled in the UK (paragraph 281 of the Rules) or for relatives who are wholly or mainly financially dependent on a UK-settled sponsor and who have no other relatives to whom they can turn for financial support (paragraph 317 of the Rules).

3.2 The earlier guidance which this document replaces was the subject of legal challenge. On 30 September 2008, the High Court ruled (in the case of *Limbu and Others*) that the 1 July 1997 cut-off was not discriminatory but it did find that the previous guidance was insufficiently clear and that it failed to take into account factors relating to the length and quality of service. In light of the Court's judgement this guidance now takes into account factors relating to service length and quality.

3.3 Prior to completion of its move to the UK on 1 July 1997, the Brigade of Gurkhas was based in Hong Kong and before that, Malaya. It was unusual for Gurkhas to have the type of extended period of residence in the UK or have close family members settled here which normally provide the basis for the grant of settlement under the Immigration Rules.

3.4 It was common for Gurkhas to serve for 10 years or more and although Gurkhas were not deployed in Northern Ireland, many saw active service during their career, particularly those who served between 1948 and 1966 but also 800 who supported the Falklands Campaign in 1982. Much smaller numbers served in Iraq in 1990-91 and in the former Yugoslavia from 1992 and many of these will have been able to gain settlement under the Rules and under the earlier discretionary arrangements.

3.5 Long service and participation in a campaign were considered a normal part of a Gurkha's duty and both were recognised and rewarded in the Gurkhas' package of pay and pension entitlements. Individual Gurkhas were not able to choose whether to participate in active duty or not and those who completed the standard maximum of 15 years service were rewarded with a pension for life - normally whilst still in their early to mid-thirties - and equivalent to a decent salary in Nepal.

3.6 Ministers have agreed that it would be appropriate and in keeping with statements made in September 2004 that, in addition to a significant period of continuous residence and the presence of significant close family members settled in the UK, **outstanding** service and commitment should be decisive when consideration is given to the exercise of discretion, irrespective of the date of discharge. It would therefore normally be appropriate to exercise discretion in favour of an applicant who has received a Level 1-3 award for gallantry, leadership or bravery (see table at 3.14 below).

3.7 As a reward for commitment and exceptional ability and quality of service significantly beyond the standard retirement point at 15 years, where applicants have completed 20 years service, this should also be regarded as a decisive factor. Long service of less than 20 years and active service generally are also factors to be considered but should not in themselves be considered decisive. They should instead be regarded as secondary factors (see 3.11 below).

3.8 Where an applicant is considered to have a chronic/long-term medical condition which is attributable to, or was aggravated by, military service, this should also count as a decisive factor (see 3.18 below).

3.9 The guidance below should therefore be applied to all new applications and all cases which fall for reconsideration after refusal under the earlier guidance. A table is provided in **Annex B**, summarizing the approach to take.

Case consideration - decisive factors

3.10 Discretion may be exercised to waive the requirement to have been discharged on or after 1 July 1997 and/or to have applied within two years of the date of discharge where the applicant:

- has spent a significant period of time living in the United Kingdom during or after service, i.e. a minimum of three years continuous residence when the applicant was in the UK lawfully but not where this includes periods of residence resulting from overstaying the time restriction of leave granted to them;

OR

- has significant close family settled in the UK. The term 'close family' includes spouse/civil partner/unmarried partner, children, parents, siblings etc, settled in the UK with whom he enjoys family life within the meaning of Article 8 ECHR;

OR

- is the recipient of Level 1 - 3 Award for gallantry, leadership or bravery;

OR

- has completed 20 or more years' service as a member of the Brigade of Gurkhas (a reward for commitment and exceptional ability and quality of service);

OR

- has a chronic/long-term medical condition which is attributable to, or was aggravated by, military service.

If any of the above factors is present, then discretion should be exercised and settlement granted unless there is adverse information.

Case consideration - secondary factors

3.11 Discretion may also be exercised where two or more of the following factors are present:

- the applicant has previously been awarded a MoD disability pension but no longer has a relevant chronic/long-term medical condition;

- the applicant received a Mention in Despatches (level 4 award);
- the applicant completed either 10 years service or where service period was less than 10 years, the applicant received a campaign medal for active service.

Unless there is adverse information, discretion should therefore be exercised and settlement granted where an applicant has been:

1. Awarded a MoD disability pension but no longer has a relevant chronic/long-term medical condition AND was also awarded a Mention in Despatches;
2. Awarded a Mention in Despatches AND has 10 years service/a campaign medal;

or

3. Awarded a MoD disability pension but no longer has a relevant chronic/long-term medical condition AND has 10 years service/a campaign medal.

3.12 Where adverse information has been received about the applicant (e.g. in their service record or of any criminal activity or their immigration history) the case should be referred in the normal way.

Note: section 11 and Annex D provide guidance for dealing with settlement applications from medically discharged Commonwealth & foreign nationals (including ex-Gurkhas medically discharged on or after 1 July 1997)

Non-determinative factors

3.13 The following should not carry weight as determinative factors in the decision to exercise discretion:

- service short of 10 years;
- the presence of family members settled in the UK who are not significant close family (spouse/ civil partner/unmarried partner, children, parents and siblings) and with whom the applicant does not have a family life within the meaning of Article 8 ECHR;
- a current illness or long-term medical condition which is not connected to their military service.⁴⁴

⁴⁴ UKBA, Immigration Directorate Instructions, chapter 15 section 2A, *Persons seeking settlement: HM Forces*, April 2009

Annex B

Details of naturalisation requirements for members of the armed forces are given in the Home Office's guidance for caseworkers, the *Nationality Instructions*, at Annex B(i) to Chapter 18:

Applications for naturalisation as British citizens made by members/ex-members of the British Armed Forces

1. General

1.1 All applicants must satisfy:

- the requirement to be free of immigration time restrictions on the date the application is made;
- the unwaivable requirement to have been physically present in the UK on the first day of the qualifying period (NB. If an applicant fails to meet this requirement we can apply the usual discretion with regard to re-declaration);
- the good character requirement (see Annex D);
- the language and 'life in the United Kingdom' requirements (see Annex E);
- the future intentions requirement (see Annex F);

AND

- the criteria described in paragraphs 2 or 3 below (depending on whether or not they are currently serving in the Brigade of Gurkhas).

2. CURRENTLY SERVING MEMBERS OF THE BRIGADE OF GURKHAS

2.1 If, at the time of consideration, the applicant is currently serving in the Brigade of Gurkhas, we should:

- a. calculate the number of days' technical absence in the qualifying period and exclude this from the residence count;
- b. combine technical absences with actual absences to obtain the total number of days' absence during the qualifying period;
- c. apply the normal levels of permitted absence (i.e. 450/270/90 days) and not waive any excess absence

2.2 Most applications from serving members of the Brigade of Gurkhas will therefore fall for refusal, as they will have excess absences. In such cases, the applicant should be advised their application has been refused along the lines of the draft letter in Annex B(ii).

2.3 Applications which, in spite of our unwillingness to exercise discretion over excess absences, would otherwise be successful should be referred to NPSCU (Policy Section) for further advice.

3. FORMER ARMED FORCES PERSONNEL (INCLUDING FORMER GURKHAS) AND THOSE CURRENTLY SERVING OTHERWISE THAN IN THE BRIGADE OF GURKHAS

3.1 Absences

3.1.1 In these cases, we should exercise discretion under paragraph 2(b) of Schedule 1 to the BNA 1981 and treat any “technical” absences during the qualifying period as residence.

3.1.2 In addition, and subject to the applicant meeting the requirement to have been in the United Kingdom on the first day of the qualifying period, we should, if necessary, be prepared to disregard any and all actual absences from the UK that were due to the applicant’s armed forces service.

3.2 Evidence of residence

3.2.1 While applicants were in military service it is unlikely that their passports will have been stamped. However, as we would overlook any service-related absences, it is not necessary to see service records confirming each absence. We would, however, need to see something from the MOD confirming duration of service in the armed forces, and also evidence of the applicant’s presence in the UK at the beginning of the qualifying period. Any non-service-related absences can be confirmed by the applicant’s passport.

3.2.2 For periods after discharge we should expect ex-servicemen to be able to produce normal evidence of residence (either a passport or alternative evidence of residence).

3.3 Immigration time restrictions

3.3.1 While in the armed services, applicants are exempt from immigration control and therefore free of immigration time restrictions. Applicants will have been free of immigration time restrictions throughout their period of service. In many cases, former armed services personnel will have been granted ILR on discharge and will meet the requirement to have been free of immigration time restrictions in the 12 months prior to the date of application. However, this should not be assumed and we should check that applicants meet this requirement. NB. Until 25 October 2006, certain transitional provisions were in place for ex-Gurkhas (see paragraph 5 below).

3.3.2 Where an ex-member of the armed forces has not been granted ILR/ILE, we should refuse the application and advise the applicant to obtain ILR/ILE prior to submitting a further application for citizenship. Refusal would be on the grounds of either:

- breach of immigration laws, if the applicant is here unlawfully (but see also paragraph 5 below); or
- not being free of immigration time restrictions, if the person is on a work permit or has limited leave to remain

3.4 Refusals

3.4.1 No applications from current or former armed forces personnel, other than currently-serving members of the Brigade of Gurkhas, should be refused without first referring to chief caseworker level, who will determine if the case needs to be referred to Ministers.

4. Spouses/civil partners and children

4.1 Spouses/civil partners and children of servicemen are not exempt from immigration control while residing in the UK. Instead, they are generally given leave to remain as

long as their spouse/civil partner is in service. While they still have limited leave to remain, neither spouses/civil partners nor children will be able to meet the criteria to be free of immigration time restrictions (spouse/civil partner) or future intentions (children), and their applications should be refused.

4.2 However, once settled, they will be able to apply for naturalisation/registration. They, too, may have high levels of absences either because they have been accompanying their spouse/civil partner while overseas or because they have not been able to accompany him while he is in the UK. If, in line with the policy in paragraph 3, we have been (or would be) prepared to disregard absences occasioned by an applicant's armed forces service, we should be prepared to do likewise in respect of his or her spouse's or civil partner's absences.

4.3 Any child born legitimately in the UK to a parent who is in HM armed forces is automatically a British citizen (where the mother is a BC or settled the child will be a BC irrespective of legitimacy). Where a child is not already a British citizen, we should consider the application in line with the parents and be prepared to waive the criterion for children over 13 years of age to have completed two years' residence in the UK.

5. Transitional arrangements

5.1 As regards the position of ex-Gurkhas living in the UK without the appropriate immigration status, immigration caseworkers were prepared, for a transitional period of 2 years ending on 25 October 2006, to waive any period of breach, or illegal residence when considering granting ILR/ILE.

5.2 To be consistent with this policy, we should also disregard any periods of breach/illegal residence in the UK between discharge and the granting of ILR/ILE when considering applications from ex-Gurkhas. It should be noted that this practice only applied for a transitional period of 2 years - until 25 October 2006. NB. This will only apply to applications from ex-Gurkhas and no other category of serviceman/ex-serviceman.⁴⁵

⁴⁵ Home Office *Nationality Instructions* ch. 18 Annex B(i) [undated; viewed 7 January 2009]