



Ministry
of Defence

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28 February 2014

Dear Jackie,

Thank you for your letters of 7 January to Philip Hammond asking for written evidence from the Ministry of Defence (MOD) about the outstanding grievances of retired Gurkhas, and also requesting copies of the Brigade of Gurkhas instructions and a pay and pension manual.

The British Government, past and present, greatly values the contribution of the Gurkhas and is committed to ensuring that their terms and conditions of service are fair. It has always sought to meet the aspirations of successive generations of Gurkha soldiers and their families. Gurkhas have served this country with great loyalty and distinction over the years, and I do not recognise the claims that the Gurkhas have been discriminated against during their Service. I believe that Gurkha terms and conditions of service have always been fair. They have always reflected the environment that the Gurkhas were in, and they have changed and improved over time to reflect the Gurkhas' changing circumstances. This approach fully supports our commitments under the Armed Forces Covenant, for example, that pension schemes should be fair and appropriate to the particular circumstances of Service personnel.

I can assure you that the MOD will fully support your inquiry into the various grievances of the retired Gurkha community. Enclosed with this letter is a document which responds to the 12 questions you posed, and also the Brigade instructions and manual that you asked for. In addition, I enclose a short summary of Judicial Review proceedings since 2003, that have addressed many of the issues behind the grievances held by some ex-Gurkhas that you will be looking at. There are also a number of documents enclosed which support the MOD's position. For clarity I have listed all of the documents enclosed at Annex A.

You may be aware that Oliver Letwin has written to Philip Hammond about your letter of 7 January which requested written evidence from the MOD. Oliver reiterated the Prime Minister's support for your inquiry. May I suggest that your inquiry also involves HRMC for issues around National Insurance contributions before 1997 and HMT on matters about retrospection and the potential impact of any recommendations you may make on wider public sector pension schemes.

If there are any aspects that you need more information or clarity on, I will arrange for the information to be passed to you as soon as possible.

ANNA SOUBRY MP

Jackie Doyle-Price MP
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(Enclosure)s

List of documents enclosed on DVD

Questions for the Ministry of Defence – Responses.

Government Actuary's Department Report – Comparison of Value of the benefits of the Gurkha Pension Scheme and the Armed Forces Pension Scheme 1975.

Report on the Impact of the Indian 6th Central Pay Commission (CPC) on the Gurkha Pension Scheme

Gurkha Pension Scheme – Notice for pensioners on weightage Changes to Pensions from 1 Jan 06.

Your Gurkha Pension Scheme Explained.

Armed Forces Pension Scheme 1975 Explained.

Armed Forces Pension Scheme 2005 Explained.

Gurkha Offer to Transfer.

Pensions Policy Instruction – Pensions Offer to Transfer to serving and retired Gurkhas.

Summary of Judicial Reviews since 2003.

Judgment of Mr Justice Sullivan in the case of Rag Prasad Purja & Others dated 21 February 2003.

Judgment of Lord Justice Simon Brown, Lord Justice Chadwick and Lord Justice Rix on the appeal of the case heard by Mr Justice Sullivan dated 9 October 2003.

Judgment of Mr Justice Ouseley in the case of Gurung, Purja and Shrestha dated 2 July 2008.

Judgment of The Hon Mr Justice Blake in the case of Limbu & Others dated 30 September 2008.

Judgment of The Hon Mr Justice Burnett in the case of BGWS & Others dated 11 January 2010.

Judgment of Lord Justice Maurice Kay, Vice President, Court of Appeal Civil Division, Lord Justice Longmore and Lady Justice Black on the appeal of the case heard by The Hon Mr Justice Burnett dated 13 October 2010.

Brigade of Gurkhas Standing Instructions.

Record Office Instructions (Gurkha).

Gurkha Pay and Pensions Manual.

All Party Parliamentary Group on Gurkha Welfare – Inquiry into Gurkha Grievances

Questions for the Ministry of Defence

Q1. In respect of pay and conditions and the pension, the Gurkha community do not believe that HMG is honouring the terms and the spirit of the Tripartite agreement. They argue that the moves to equalise the Gurkha terms of service post 1997 are consistent with the spirit of the Tripartite agreement and that similar concessions should be extended to Gurkhas who left the service before 1997. **Could the Government explain why they think that different terms and conditions are consistent with the Tripartite agreement and how the treatment of pre 1997 Gurkhas is fair?**

Response

The Brigade of Gurkhas exists because in 1947, after Indian independence and following a tripartite conference between representatives of the United Kingdom, India and Nepal, a Memorandum of Agreement was signed between the three Governments, in which Nepal agreed to the employment of Gurkha troops in the armies of the UK and India. This document is generally known as the "Tripartite Agreement" (TPA), an expression which in practice is used also to include any supplementary bilateral agreement which falls within the original parameters and subsequent exchanges of letters between the Governments on the subject of the Gurkhas.

The purpose of the TPA was to enable Nepalese citizens to be recruited into the Armies of Great Britain and India (or transferred from) and to ensure that each country could recruit and maintain formed Gurkha Regiments on an equal basis, whilst at the same time safeguarding the cultural, religious and ethnic heritage of Gurkha soldiers in accordance with the wishes of the Nepalese Government. These arrangements reflected sensitivities at the time about whether the newly formed Indian Army would be able to retain or attract Gurkhas if there was a substantive differential between the British Brigade of Gurkhas and Indian Army terms and conditions of service (TACOS). There was also a concern about creating a differential in Nepal where British Gurkha pensioners continued to live alongside fellow citizens who served in the Nepalese and Indian Armies.

There were, therefore, two key principles that underpin the employment of Gurkhas in the British Army.

- First, that Gurkhas were recruited as Nepalese citizens into formed units in the British Army and that when they completed their service they were discharged in Nepal, not the UK.
- Second, that basic Gurkha remuneration remained linked to Indian Army TACOS.

These principles are enshrined in the TPA, the foundations of which are the mutual goodwill that exists between the countries concerned. Historically, the British Government did not wish to undermine this by stepping outside the terms of the TPA or acting in a way that could impact on our ability to recruit Gurkhas from Nepal. It is for this reason that successive governments have always honoured their obligations to the Nepalese and Indian Governments under the TPA, and acted in accordance with the principles that underpin it.

From 1948 the Brigade of Gurkhas was a Far East based force, first in Malaya/Malaysia during the Emergency. Following the Borneo confrontation the Brigade moved to Hong Kong in 1971 and stayed there until it became UK based from 1 July 1997, when Hong Kong was returned to China. Prior to 1997, some Gurkhas served in the UK, between 1962 and 1964 there was a battalion in Tidworth, 25% of whom were accompanied by their families. From 1971 a battalion was stationed in Church Crookham on a two year unaccompanied tour. There was also a battalion stationed in Brunei, again, 25% of whom were accompanied by their families. During the period up to 1997, Gurkhas could expect to only serve in the UK on a single tour during their 15 years service, but this would depend on factors such as the rotation of the up to six Gurkha battalions, individual postings and the timing of periods of long leave in Nepal. The majority of their service would have been in the Far East and they would have expected to be discharged in Nepal.

For these reasons, and because of the TPA, prior to 2007 Gurkhas have always been treated as a separate entity in terms of their TACOS. It is important to note, however, that the MOD has always regarded the TPA as having a degree of flexibility. Reviews of Gurkha TACOS have reflected this from time to time and, as a result, it has been possible to make significant enhancements to Gurkha TACOS, although these changes have always remained within the spirit and terms of the TPA. The result is that the arrangements under which the MOD employed Gurkhas became a unique mix of old and new arrangements, partly based on practices in the Indian and British armies. Taken as a whole, they were different to, but not necessarily less favourable than, arrangements for British soldiers.

The British Government set out 'Terms and Conditions of Service for Gurkha Forces serving in the British Army' within the 1947 TPA (Part One Section J). Paragraph 11 of the Memorandum of Agreement dated 7 November 1947 between the United Kingdom and India states that: "the basic rates of pay admissible to Gurkha officers and soldiers serving HM Government shall approximate to those laid down in the present Indian Pay Code". However, the Memorandum of Agreement also allowed: "that a special allowance, to compensate for permanent services overseas and high cost of living, shall in addition be admissible to Gurkha Officers and soldiers serving HM Government overseas." Thus the TPA agreement provided a mechanism by which remuneration could be substantially greater than that provided in basic pay. These "points of agreement" were expressly incorporated into the Memorandum of 9 November 1947.

For pensions, Paragraph 7 of section IV of this 1947 Terms and Conditions document states: "The payment of Gratuities and Pensions will be admissible to Gurkha soldiers, NCOs, WOs and King's Gurkha Commissioned Officers with reckonable service in the Indian or British Armies under the Pension Regulations for the Army in India, 1940 applicable to VCOs and IORs¹, and amended from time to time..."

In practice this meant that from 1948 to 1997 the only expectation that Gurkhas could reasonably have had was service mainly in the Far East, and retirement in Nepal; they knew this, and the whole of the Gurkha Pension Scheme (GPS) was designed around this; no-one expected any different. However, from 1997 onwards this began to change; more service in the UK, different expectations, and that is why Ministers announced on 11 January 2005 a review of Gurkha TACOS. The expectation was to be discharged in

¹ VCO stands for Viceroy Commissioned Officer and IOR stands for Indian Other Rank.

Q2. Since the extension of the right to settlement in the UK, Gurkhas are choosing to settle here and for those who retired before 1997 their pension arrangements are not adequate with the result that Gurkhas are dependent on pension credit and housing benefit. It is stated that the Gurkhas would not settle here in such large numbers if pension arrangements in Nepal were more generous? **Is there a case for giving an award to the pre 1997 Gurkhas some of whom are living on discretionary welfare pensions of just £40 per month?**

Response

Retired Gurkhas who are able to come to the UK under settlement arrangements are those with at least four years service, and who were discharged from the Brigade of Gurkhas after 1 January 1948.

Prior to 1997, the Gurkha pension was designed to support settlement in Nepal and, as shown in the response to Q5, these pension payments compare extremely well against Nepali public servants. Given that, at the time, the Brigade of Gurkhas was predominantly based in the Far East, with some temporary assignment to the UK, there was minimal demand and aspiration for retiring Gurkhas to settle in the UK. The pre-1997 package was therefore deemed to be a good deal and very fair.

The Government also has a general policy not to introduce improvements to public service pension or compensation schemes retrospectively. Making retrospective changes to pension schemes would have financial implications across the wider public sector, and would potentially lead to demands from other public service pensioners or veterans. The general policy of successive Governments that there should be no retrospective improvements to public service pension benefits was explained by the then Minister for the Armed Force in a debate² on Armed Forces pensions:

“It is a legal principle that individuals receive benefits in accordance with the scheme rules that were in place at the time of their retirement. It is a principle of public sector pensions policy, and one that has been upheld by successive Governments, that improvements to pension schemes are not made retrospective. If the changes were made retrospective, it would add significantly to the cost to the taxpayer, not least because the issue is common to other public service schemes, not just that for the armed forces.”

² Hansard (HC) 31 Jan 07 Column 338

the UK and so pension arrangements were changed to meet this new requirement as part of the move to normal Army TACOS from 2007.

Q3. There are approximately 12,000 retired Gurkhas relying on discretionary payments. **What is stopping the MOD from putting these welfare payments made by the Gurkha Welfare Trust to be on a more formal footing?**

Response

We have been advised by the Gurkha Welfare Trust (GWT) that there are around 7200 (not 12000) recipients of a GWT welfare payment. These welfare payments made by the GWT are discretionary and based on need, not entitlement, and are charitable in nature. Of the 7200, over 4200 are Gurkha Second World War veterans discharged before 1948, or are widows of Gurkhas who served or were discharged before 1948 from the British Indian Army, who were not part of the British Brigade of Gurkhas. Only around 3000 veterans and widows receiving a GWT welfare payment have a connection to the British Army, but they did not have sufficient service to qualify for a GPS pension.

The Government's policy on retrospection has been covered in Question 2 and this precludes making any changes to the GPS to give these veterans or widows a pension entitlement.

Q4. It is enshrined in British Law that there should be equal pay for work of equal value. It appears quite arbitrary that there are such different conditions in place. **Why is equality being extended to current soldiers while existing retirees are ignored?**

Response

The existing Gurkha retirees (pre-1997) were doing very different roles to their British counterparts at the time. As mentioned in Q1, the Brigade of Gurkhas operated in the Far East and were paid as per the TACOS agreed as part of the TPA. When Gurkhas undertook their temporary postings to the UK or other overseas locations away from Hong Kong, they were paid an additional supplement in order to meet the additional cost of living. We have therefore always sought to ensure that we enhanced Gurkha Conditions of Service where it has been reasonable and appropriate to do so.

As the role of the Brigade changed and more of it came to be based in the UK following the closure of Hong Kong, Gurkha Terms and Conditions were reviewed in 2005 and by 2007 serving Gurkhas were placed on an equal footing to the rest of the Army. The principles of no retrospection also apply in this area.

Q5. A comparison of Gurkha terms and conditions of service and those of British officers is difficult to assess in terms of fairness as they are so wildly different. A Gurkha pension is payable after fifteen years service and immediately on retirement, whereas British soldiers have to work 22 years for a full pension which is not then payable until reaching 60. **Can you satisfy us that the arrangements for pre 1997 retirees will give them an appropriate standard of living in Nepal?**

Response

The claim that the GPS is less satisfactory than the Armed Forces Pension Scheme (AFPS), does not withstand scrutiny. Gurkhas who qualified for the GPS (which will be the majority of those Gurkhas who served since 1948) **received an immediate pension after 15 years' service, typically in their early 30's**; whereas most British soldiers on the AFPS do not serve the 22 years necessary to qualify for an immediate pension, and instead have a preserved pension payable at the age of 60. This typically means that most Gurkhas will have been receiving pension payments for over 25 years before British soldiers of the same rank and length of service qualify for any payments under the AFPS. Further details on preserved pensions under the AFPS are provided in the answer to Question 6.

As an example, a calculation was made in 2009 which showed that a Gurkha Rifleman who retired in 1994 will have received some £61,000 at 2009 prices by age 60, compared to his British AFPS comparator who will have received no pension payment to that point. Gurkha officers and Warrant Officers Class 1, around 10% of the retired group, are the only cohort for whom a British pension is significantly better. It is not the case that "equalisation" of the pension would benefit the majority of Gurkhas. This point has been reinforced by a recent report produced by the Government Actuary's Department (GAD) for the MOD which compares the value of benefits of the GPS against APFS 1975. A copy of the GAD report has been included in the bundle for the APPG.

Gurkha pensions remain linked to those of the Indian Army and have special features to reflect the unique nature of Gurkha service. In particular, the immediate payment of pensions on discharge in Nepal at the 15 year point and, in the event of the death of a Gurkha pensioner, the ability to transfer up to 120% of the pension to the surviving spouse. This arrangement reflects local circumstances because, unlike the UK, Nepal does not have a sophisticated system of state benefits and support.

Two significant reviews in recent years have affected the level of pension provision. A 1981 review led to Gurkha pensions being linked to the top band provided for in the Indian Army Pension Regulations. It was also decided that the annual indexation of pensions should be linked to cost of living increases in Nepal, rather than the Indian Retail Price Index.

More recently, an examination of Gurkha pensions in 1999 led to the introduction of welfare related cash uplifts to British Gurkha pensions to take account of Indian Government benefits-in-kind, such as access to Indian military hospitals, available to Indian Army Gurkha pensioners. This resulted in substantially increased pension payments for all 26,000 British Gurkha pensioners, with effect from 1 April 2000. Effectively, this means that Gurkha pensions are set at double the top rate of the Indian Army and now compare favourably to professional salaries in Nepal. Previously the embassy in Kathmandu had confirmed that a retired Rifleman with 15 years of service

has a higher pension than a bank clerk's salary, and a retired Lieutenant (Queen's Gurkha Officer) with 24 years of service receives a pension which is more generous than the salary of Nepal's Prime Minister.

In addition to these reviews, Gurkha pensions benefit from the 10 yearly Indian Central Pay Commissions (CPC), which adjust the levels of pay and pensions for comparators in the Indian Army. The link to Indian pensions is maintained whenever there are changes and GPS pensions adjusted accordingly. The Indians rebased their pension rates in the 5th CPC with a 40% increase from 1 January 1996, and GPS pensions were increased accordingly to keep level. For the 6th CPC from 1 January 2006, the Indians gave their pensioners another 40% increase but this was not replicated in the GPS because GPS pension rates were above double the comparator levels, and so did not need to be adjusted. The report produced by the MOD on the 6th CPC is included in the supporting documents and the details show that for the majority no action was needed. The annexes to the report show the comparator pension rates of the Indian Army, and the calculations used to assess the relative rates. Where necessary, for a small number of pension rates, action was taken to bring them up to double the level of the Indian comparator. Following the 6th CPC effective from 2006, but only announced in November 2008, the Indian authorities split pension arrangements with a new scheme for those retiring after 2006. As by November 2008 the GPS was a closed scheme the comparator for the GPS has been taken as the pre 2006 Indian scheme.

There are also periodic changes to Indian pensions which are implemented for the GPS. For example, in 2006 a change in the way pension rates were calculated, using a mechanism called weightage, resulted in an increase of up to 20% for the majority of Gurkhas. A briefing note to all Gurkha pensioners on this change is in the supporting documentation.

In the context of the cost of living in Nepal, therefore, the level of Gurkha pensions make Gurkha pensioners amongst the highest "earners" in Nepal. To put GPS pension rates into perspective in Nepal a range of service pensions including the highest and lowest, and the lowest widows pension, are shown below against the rates of selected Government salaries in Nepal. Rates shown are Nepali rupees per month, the exchange rate on 1 February was NPR163.30 to £1:

GPS Pensioner	Nepali Salaries	Rate per Month
Major (Gurkha Commissioned Officer ³)		122800
	President	109410
Major (Queen's Gurkha Officer ⁴)		83671
Lieutenant (Queen's Gurkha Officer)		60659
	Prime Minister	56200
	Minister	44330
	Parliamentarian	40160
Sergeant		36028

³ Gurkha Commissioned Officers were selected from the most able Queen's Gurkha Officers for wider employment in the Army outside the Brigade of Gurkhas.

⁴ In the British Army Queen's Gurkha Officers were unique to the Brigade of Gurkhas and served almost exclusively in Brigade units.

	Nepali Army Brigadier General	33259
Riflemen, Lance Corporal		29714
	Nepali Army Lieutenant Colonel	28535
	Primary School Teacher (top grade)	24900
Widow Riflemen, Lance Corporal		21230
	Nepali Army Recruit	11800

GPS pension rates are as 1 April 2013. The source of the salary rates in Nepal was the Kathmandu Post of 3 August 2013 which quoted documents released by the Ministry of Finance:

<http://www.ekantipur.com/the-kathmandu-post/2013/08/02/nation/how-much-salary-do-our-government-officials-draw/251897.html>

Certain employments in Nepal attract additional bonuses and benefits, and so a strict comparison is difficult, but to balance that, GPS pensions in Nepal are paid with no deduction of tax.

In general economic terms, according to World Bank data the Gross National Income per capita in Nepal is \$700, compared to the UK which is \$38670. World Bank data is available at: <http://data.worldbank.org/indicator/NY.GNP.PCAP.CD>

From these answers it can be seen that the GPS is a very generous scheme which was constructed, and is maintained, to give Gurkha pensioners a very good standard of living in Nepal.

Q6. There are Gurkhas who are in receipt of no pension as they were unable to complete fifteen years service through no fault of their own, for example those made redundant in the 1960s after the Borneo confrontation? **Should these ex Gurkhas receive more than the welfare pension of £40?**

Response

Background

Following the Borneo Confrontation from 1963 to 1966, the Brigade of Gurkhas moved to Hong Kong. As part of that process they had to reduce in size and therefore a redundancy programme was put in place between 1967 and 1972. Pensions were paid to all those with at least 10 years service. Gurkhas selected for redundancy who had less than 10 years service did not qualify for a pension, but were given a capital lump sum. It is mainly this group of Gurkhas that are the subject of this particular issue. This group would like to be given preserved pensions. Details of preserved pensions are below. It would be against long standing Government policy to give a service pension entitlement to these Gurkhas for the reasons of retrospection covered in the response to Question 2, and also because it would be unfair in comparison with British Army veterans with the same amount of service who also receive nothing.

Pre 1975 Service in the Armed Forces – Entitlement to Pension Benefits

Prior to 1975 there were no rights to preserved pensions in any public or private pension schemes. Most schemes had very restricted qualifying criteria for the award of pensions. For instance, to qualify for a pension under the Civil Service arrangements, an individual had to be over age 50 and have served for ten or more years. Those who left voluntarily before meeting these criteria lost rights to pensions. For the Armed Forces, occupational pensions were awarded only if a member had at least 16 years qualifying service after the age of 21 as an officer or 22 years qualifying service after the age of 18 as an other rank. Engagements for shorter periods were on non-pensionable terms.

Gratuities (lump-sum payments) were awarded to those who did not serve long enough for a pension but had completed at least nine years reckonable service as an officer or 12 years reckonable service as an other rank. Gratuities were not paid to compensate for lack of pension but rather to assist the individual to settle into civilian life.

Background to Preserved Pensions

The Social Security Act 1973 brought about changes by requiring all pension schemes to preserve pension rights for those who left service after 6th April 1975 having completed at least five years qualifying service, and having attained the age of 26. Later Social Security Acts reduced the qualifying period from five years to two years and removed the age qualification requirement. These changes were not made retrospective. Individuals receive the benefits in accordance with the scheme rules in place at the time of their retirement.

Key Points

The key points to recognise when looking at claims for changes to pension entitlement are:

- The issue of pre-1975 pensions does not just affect the Armed Forces but is common to all other public service schemes.
- AFPS 75 legacy issues are replicated in other public pension schemes in existence prior to the Social Security Act 1973.
- Where legacy issues are common across public sector schemes, a retrospective change implemented for the Armed Forces would result in pressure from others for similar treatment.
- It is normal practice in public service pension schemes, and more widely, that improvements should not be applied retrospectively.
- In accordance with legal principle, entitlements were tied to the pension rules in force at the date of retirement.
- Successive governments have resisted retrospective change to public sector pension schemes, and the policy of no retrospection has been upheld by the European Court of Human Rights. The House of Commons Library contains details of this case in Standard Note SN/BT 1424.

Q7. Gurkhas who enlisted before 1993 were given the opportunity to transfer into the Armed Forces Pension scheme after 1997. There is a suggestion that the basis under which those transfers have taken place is unfair. **Can HMG explain the fairness of the actuarial basis under which they were transferred?**

Response

All Gurkhas who were in service on 1 July 1997 were given the opportunity to transfer to the AFPS 1975. In addition, those in service after 6 April 2006 were also given the choice of transfer to the AFPS 2005. The approach used in the offer to transfer, which was based on an actuarial value basis for service prior to 1 July 1997, was tested in the High Court and found to be reasonable. As the Court of Appeal stated in the 2008 judicial review appeal:

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

The full judgment has been provided in the bundle supporting this document.

The basis of the offer to transfer was that post 1 July 1997 service accrued under the GPS was valued on a 'year for year' basis and service pre 1 July 1997 was calculated to provide an equivalent value to take account of the different benefit structure in the AFPS. This approach reflected the policy decision to provide access to AFPS benefits for post 1 July 1997 service. The GPS was structured around the employment pattern of Gurkhas (in particular the availability of immediate pensions after 15 years service, which is shorter than the 22 years required under AFPS 75). For serving Gurkhas service transferred would become a credit under the AFPS - this form of approach allowed for straightforward administration of an individual's pension entitlement at the end of their engagement. For those who were no longer serving but who do not qualify for an immediate pension in AFPS, their GPS pensions continue up to the point they reached the deferred pension age at 60/65. They would then be transferred over to the AFPS with the guarantee that on transfer they would receive at least the rate of pension that was being paid by the GPS. Examples of this approach are contained in the offer to transfer booklet which is in the supporting documents.

In the calculation of the AFPS credit it was important for GAD to have knowledge of the AFPS and GPS, together with the associated career patterns. The actuarial assumptions were set by GAD in conjunction with MOD. All of the assumptions used were set as best estimates based on the information available at the time. Such elements as currency exchange rates and pension indexation could not be predicted, clearly these change over time, but in order to have a transfer offer there had to be a fixed point in time. The

principle underlying the process was to provide equivalent value for pre 1 July 1997 service.

To assist Gurkhas in making their decision on transferring to the AFPS, briefings were provided to tell them about the pension issues involved and, importantly, about the implications of changing engagement from the 15 year Gurkha engagement to the 22 year Open Engagement. In addition, all Gurkhas were given copies of both the pension schemes rules and an offer to transfer booklet, copies of which are included in the supporting documents.

To assist with further background matters over the conduct of the transfer the Pensions Policy Instruction that covers the whole process is included in the supporting documents.

Q8. It has been suggested that there should be a new bilateral agreement between the UK and Nepal to settle the conditions under which Gurkhas will serve in the British Army?
Is there a case for this?

Response

The Government of Nepal wish to retain the 1947 TPA as an expression of principle and have agreed to negotiate a Memorandum of Understanding (MOU) intended to supplement the TPA to reflect the outcome of the revised Gurkha TACOS. Although the Nepalese Government have had mature drafts to consider since 2007 it has not been possible to pursue the MOU in the intervening time due to the delays in forming a Government in Nepal that has the authority to make such agreements. Following recent elections, a Government with a mandate to make substantive decisions is now in place in Nepal, which should allow the MOU to be dealt with. However, there are many issues that the Nepali Government needs to deal with and this may not be a high priority for them. It remains the British Government's intent to agree an MOU as soon as is practicable.

Q9. Culturally, Nepalese live amongst the extended family but the visa charges for adult dependents to settle in the UK are punitive and it is suggested that they should be relaxed. **Could it be explained why these arrangements are considered fair?**

Response

Immigration matters are a subject for the Home Office. From a MOD perspective, ex-Gurkha personnel are in the same position as all Commonwealth ex-service personnel who have to pay the standard visa charges laid down by the Home Office. It would be unfair to all other non-British ex-service personnel to single out ex-Gurkhas for beneficial treatment.

Q10. Is HMG meeting its obligations in respect of healthcare in Nepal?

Response

If veterans remain in the UK, the NHS in England and the Devolved Administrations provide healthcare as they do for all other eligible members of the general UK population. For veterans who return to their home country or decide to live elsewhere overseas, they need to arrange and fund their own medical insurance or rely on a combination of local healthcare provision (if there is any) complemented by private medical treatment. This does mean that when ex-patriot veterans return to the UK and seek NHS treatment, they are required to pay as they are no longer deemed residents.

With regards healthcare in Nepal, following a Ministerial Examination of Gurkha pensions and death in service gratuities in 1999, Gurkha pensions were doubled to take account of the benefits in kind that the Indian Army provided for their Gurkha veterans. The Examination found that the principle benefit in kind was access to medical treatment and this was the main reason for doubling the rate of GPS pensions.

If MOD did fund Gurkha healthcare provision in Nepal it would place those veterans at an advantage over other groups of veterans in the UK and overseas.

The Armed Forces Compensation Scheme (AFCS) provides compensation for injury or illness caused by service in the UK Armed Forces on or after 6 April 2005. This includes provision for overseas medical expenses. Any UK based member or former member of the Armed Forces (regardless of nationality) who has been injured as a result of their service is eligible for priority treatment from the NHS for their service-caused injury. In addition, all non-UK national personnel who have been seriously injured due to service are eligible to stay in the UK, at the discretion of the Home Office.

In line with the Scheme's underlying principle of fairness, AFCS may, in certain circumstances, pay the necessary medical expenses of seriously injured personnel who live overseas after their discharge from the Services. This is to ensure that an individual is able to move to a place of family or other connection without being constrained by their service-caused injuries.

The AFCS will only pay for overseas medical expenses if an individual:

- receives at least one AFCS award for an injury in tariff levels 1-8,
- becomes ordinarily resident outside the UK within one year of service termination; and
- is ordinarily resident outside the UK when the expenses are incurred.

The individual must move overseas within a year of discharge. This allows individuals an appropriate amount of time to make necessary arrangements to move abroad after leaving service. It also means those individuals who may simply wish to emigrate later in life are not brought within the scope of the Scheme.

The War Pension Scheme (WPS) provides compensation for injury or illness caused by service in the UK Armed Forces prior to 6 April 2005. War pensioners who move or live abroad are told to seek advice on the availability of public healthcare overseas, as

arrangements vary from country to country and depend on whether a person is working or in receipt of UK Social Security benefits.

The MOD's Service Personnel and Veterans Agency (SPVA), who administer the WPS, may meet the cost of treatment of accepted disablements of war pensioners living overseas, provided that the treatment is clinically necessary for a disability due to service and it is not available from any other source. Private treatment costs cannot be refunded if treatment is available through the health system in the country of residence. Treatment may include surgery, dental treatment, glasses, aids, appliances and medication.

War pensioners living overseas are told to contact the SPVA before arranging any treatment, particularly as it may be possible to obtain treatment from the health authorities in the country of residence. If SPVA approval is not sought in advance it may not be possible for an individual to reclaim the cost of any treatment.

Q11. Is the failure to settle the outstanding issues regarding the pension encouraging benefit tourism?

Response

The MOD would not wish to label Gurkha veterans in such a way. Many of the retired Gurkhas settled in the UK are of working age and are keen to be in employment, and they make a positive contribution to the UK economy.

The reasons that older ex-Gurkhas travel to the UK, using the special arrangements in place since May 2009, are more complicated. Those without GPS pensions are certainly attracted by the benefits available in the UK, and they may have a better quality of life in the UK. We also believe that some Gurkha veterans may be motivated to move to the UK in the hope that wider family members in Nepal may, in due course, be able to follow them.

Q12. Gurkhas believe that the terms and conditions under which they were employed were different and less fair than their British counterparts for example with reference to leave. **Is HMG satisfied that the arrangements were fair? How does the treatment of retired Gurkha soldiers compare to those who service in the British Army from the Commonwealth?**

The TACOS of Gurkhas are fair and met the aspirations of successive generations of Gurkha soldiers and their families. They have always reflected the environment that the Gurkhas were in and they have changed and improved over time to reflect the Gurkhas' changing circumstances as can be seen below.

Under the original TACOS which came from the TPA, Gurkhas were entitled to a cost of living addition to cater for the higher costs of being stationed outside India. This addition was based on the costs of living in the country the Gurkha served, so historically there was a Hong Kong addition, a Brunei addition and also, before 1997, a UK addition. The UK addition brought Gurkha take home pay up to broadly the same level as comparators in the wider British Army. The Hong Kong and Brunei additions were paid net as Gurkhas received free food and accommodation and were not liable for National Insurance (NI) or tax when serving in Hong Kong or Brunei. For those serving in the UK, their pay and UK addition was taxed by the MOD using an internal arrangement, therefore, no individual had a tax relationship with the Inland Revenue/HM Revenue and Customs (HMRC).

When the Brigade became UK based in 1997 all Gurkhas received a universal addition regardless of where they then served. This universal addition was similar to the old UK addition and achieved the same effect, in that it gave Gurkhas broadly the same net pay as their British counterparts. However, with the introduction of the universal addition the tax mechanism for Gurkha remuneration changed to an Annual Voluntary Settlement paid by MOD for those serving in the UK, and all pay and allowances were issued net of tax. At HMRC direction, Gurkhas assumed a personal responsibility for tax and NI from April 2005. NI numbers were issued to all Gurkhas, and individuals' pay statements started to show deductions from May 2006 once the Gurkha pay computer had been upgraded to run Pay As You Earn. For the period July 1997 to March 2005 HMRC treated NI as having been paid for serving Gurkhas and credited individuals' accounts with qualifying contributions.

Finally, in 2007 Gurkhas moved on to full British TACOS with a few differences to preserve the integrity of the Brigade. These differences are that the Brigade is manned by Nepali nationals, who are recruited in Nepal, who are trained separately, who have a higher than normal proportion of officers commissioned from the ranks and who serve in formed units. In addition, Gurkhas with less than three years service are not entitled to accompanied service. All these acts were covered by Ministerial arrangements made under section 41 Race Relations Act 1976 so were not unlawful. If these arrangements had not been made, it would not be possible for Gurkhas to serve in the British Army. In terms of engagement, pay, allowances and pensions matters, Gurkhas are now no different to any other personnel in the Army. After five years service Gurkhas are able to transfer out of the Brigade into the wider Army and take advantage of a broader spectrum of career opportunities.

Commonwealth personnel have always served on the same TACOS as the wider Armed Forces. However, prior to 1998 there were relatively few Commonwealth personnel in the Army, about 590 in 1998 compared to about 3800 in the Brigade of Gurkhas. In 1998

relaxation of the five year UK residency requirement for most applicants, allowed those who have spent less than five years in the UK entry into the Armed Forces and Commonwealth numbers in the Army have now reached around 6360. It should be noted that following the changes in July 2013, the five year residency requirement for Commonwealth personnel has been re-introduced and inevitably the number of Commonwealth personnel in the Army will fall. This residency requirement does not apply to Gurkhas, who are recruited under separate arrangements.

Commonwealth soldiers on discharge have been able to apply for settlement in the UK on the basis of four years service, as have Gurkhas since October 2004, for those discharged after 1 July 1997, and May 2009 for those discharged prior to 1 July 1997. No figures are available for how many have done so. Those Commonwealth personnel who returned to their country of origin have two years after discharge to apply for settlement in the UK, the same as Gurkhas who were discharged on or after 1 July 1997. Gurkhas discharged prior to 1 July 1997 have an advantage over Commonwealth personnel, in that they are not limited to when they can apply for settlement in the UK. Any Commonwealth personnel who did not apply for settlement within two years of discharge are unable to do so, unlike pre 1 July 1997 Gurkhas who have no time limit on their applications.

On the specific example of leave, prior to the change in TACOS in 2007 Gurkhas were given six months (reduced to five months in 1997) long leave in Nepal after every three years of service. For those years when they did not take long leave Gurkhas had an entitlement to 20 days local leave. Taking account of their annual local leave, religious holidays and long leave in Nepal, Gurkhas' leave entitlement spread over a three year period was approximately 75 days a year, compared with a British soldier's 30 days a year. This ignores additional days off taken by both British and Gurkha soldiers when Bank Holidays fall or when there is an entitlement to Post Operational Leave. The issue behind this question is not of leave itself, but the fact that pay was reduced to Indian Army rates only while on long leave in Nepal. The issue of pay while on long leave has been covered in the supporting evidence under the 2003 Purja Judicial Review.