

This guidance is based on the Immigration Rules Appendix Armed Forces

## **About this guidance**

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This guidance tells you about settlement applications from members of HM Forces who have been discharged.

In this guidance 'armed forces rules' means Appendix Armed Forces.

'HM Forces' means a member of the Royal Navy, British Army or Royal Air Force who is serving as a member of the regular forces.

'Gurkha' means someone enlisted in the Brigade of Gurkhas as part of the British Army.

'Discharge' means an HM Forces member who has permanently left HM Forces. All those who have been discharged will hold a certificate of discharge. Those about to be discharged will hold a letter from their commanding officer confirming their date and reasons for discharge.

Anyone compelled to leave HM Forces following a court martial has not been discharged but dismissed.

'Medical discharge' is when an HM Forces member is prematurely discharged because their health prevents effective service. They will often receive compensation for this discharge.

'Reckonable service' is the service which counts towards pension. This starts from the first day of paid service in HM Forces and does not include certain absences including any period of detention, unauthorised absence or unpaid leave.

Changes to this guidance – This page tells you what has changed since the previous version of this guidance.

Contacts – This page tells you who to contact for help if your senior caseworker or line manager can't answer your question.

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	Information owner – This page tells you about this version of the guidance and who owns it.
	Safeguard and promote child welfare – This page explains your duty to safeguard and promote the welfare of children and tells you where to find more information.

# Key Facts: HM Forces: applications on discharge

This page shows you the key facts for HM forces - applications on discharge.

Eligibility requirements	To be eligible the applicant must on discharge:
	<ul> <li>have completed a minimum of four years' reckonable service</li> <li>meet the criteria for medical discharge</li> <li>have been discharged from HM Forces not more than two years before the application</li> <li>have leave under paragraph 276KA or 276QA of the Immigration Rules or paragraph 15 or 19 of Appendix Armed Forces or under the concession for medical discharge</li> <li>not fall for refusal under part 2 of Appendix Armed Forces to the Immigration Rules</li> <li>if the applicant is a Gurkha, be a citizen or national of Nepal</li> <li>And on medical discharge:</li> <li>have been medically discharged from HM Forces not more than two years before the application unless new evidence is produced regarding their prognosis</li> <li>have been medically discharged due to an illness or injury which is attributable to service in HM Forces either where it came about owing to deployment in an operational theatre (where military action takes place), or it is appropriate to grant leave taking into account the:         <ul> <li>seriousness of the illness or injury</li> <li>need for further medical treatment, and the availability of such treatment in the applicant's country of origin</li> <li>prognosis for recovery including whether the injury or illness affects the applicant's ability to support themselves in their country of origin</li> <li>applicant's length of reckonable service at the time of discharge</li> </ul> </li> </ul>
Application forms	Application made outside UK – VAF (AF) Leave to remain – FLR(AF) Indefinite leave to remain – SET (AF)
Cost of application	Fees for Home Office services
Entry clearance mandatory?	Yes
Is biometric information required for applications made in the UK?	Yes

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Code of leave to remain granted	Indefinite leave to enter or remain Limited leave to remain - Code 1A
Entry clearance endorsements	Indefinite leave to enter
Conditions of leave to remain	Indefinite leave to remain, indefinite leave to enter or limited leave – work/access to public funds
Work and study allowed?	Yes
Switching into this category allowed?	Yes
Is knowledge of language and life required?	No
Immigration Rules paragraphs	Appendix Armed Forces

# **Changes to this guidance**

About this guidance Key facts	This page lists changes to most recent at the top.	to the 'HM Forces: applications on discharge' guidance, with the	Related links
Discharged armed	·		
forces members:	Date of the change	Details of the change	<u>Contacts</u>
eligibility criteria	14 May 2015	Change request:	Information owner
Medical discharge			
Ministry of Defence		Discharged armed forces members:	
disciplinary procedures		settlement after entry: leave outside the	
Grant or refuse entry		rules – new page	
<u>clearance</u>	19 December 2013	Change request:	
		HM Forces: applications on discharge:	
		<ul> <li>link to Chapter 15 Section 2A Annex J</li> </ul>	
		added.	
		Discharged members of the armed forces:	
		eligibility criteria:	
		<ul> <li>link to Chapter 15 Section 2A Annex J</li> </ul>	
		added.	
		Minor housekeeping changes.	
	2 December 2013	Guidance modernised by the armed forces	
		policy team and the modernised guidance team	

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# Discharged members of the armed forces: eligibility criteria

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This section tells you how to consider applications from foreign or Commonwealth nationals (including Gurkhas) who have been discharged from HM Forces.

This is covered by paragraphs 11-19 of Appendix Armed Forces.

### **Basic requirements**

To apply under these rules the applicant must:

- have completed at least four years reckonable service with HM Forces (this excludes periods where the applicant was absent without leave, in military detention or on unpaid leave)
- meet the medical discharge criteria
- if they were a Gurkha, be a citizen or national of Nepal

and on the date of the application:

- have been discharged from HM Forces less than two years before the date of application
- if medically discharged more than two years before, new information regarding their prognosis is being considered
- have been granted their most recent period of limited leave under either paragraph 15 or 19 of Appendix Armed Forces or under paragraphs 276KA or 276QA of the Immigration Rules as a foreign or Commonwealth citizen who has been discharged from HM Forces or under the concession which existed in respect of those medically discharged from HM Forces

### Reckonable service

To qualify under this rule the applicant must have completed a minimum of four years reckonable service. Details of an applicant's reckonable service are provided by the

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applicant's military unit.

However, in general, reckonable service is all service when an HM Forces member is not:

- absent without leave (AWOL)
- detained in military detention
- detained serving a sentence in one of Her Majesty's Prisons (HMP), Young Offenders Institutions (YOI) or Youth Justice Board (YJB) establishments
- on a career break

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### Suitability criteria

For guidance on suitability requirements see attached links. Suitability requirements under Appendix Armed Forces are the same as those under Appendix FM plus the following subparagraphs from the general grounds for refusal: 320(3), 320(7B), 320(10), 320(11), 321(iii), 321(4A), 322(2), 322(3) and 323(i).

## Discharged members of the armed forces: indefinite leave to enter

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This page tells you how a discharged member of HM Forces can apply for settlement (indefinite leave to enter) before coming to the UK.

If an applicant has completed at least four years' reckonable service with HM Forces, an application for indefinite leave to enter can be made.

An individual has to be outside the UK to be issued entry clearance for indefinite leave to enter. The other requirements are:

- they must meet the general eligibility requirements as either a member of HM Forces who was discharged after at least four years' reckonable service
- meet the medical discharge criteria
- they must not fall for refusal on suitability grounds
- they must have submitted a valid application for indefinite leave to enter as a foreign or Commonwealth citizen discharged from HM Forces

# Suitability criteria

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For guidance on suitability requirements see attached links. Suitability requirements under Appendix Armed Forces are the same as those under Appendix FM plus the following subparagraphs from the general grounds for refusal: 320(3), 320(7B), 320(10), 320(11), 321(iii), 321(4A), 322(2), 322(3) and 323(i).

For more information see link on left: Discharged armed forces members: eligibility criteria.

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# Discharged armed forces members: settlement after entry

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This page tells you about the entry or extension requirements for discharged members of HM Forces.

#### Settlement after entry

An individual must be present in the UK to be granted indefinite leave to remain as a foreign or Commonwealth citizen who has been discharged from HM Forces. They must:

- not be in breach of any immigration laws, except for any period of overstaying for a period of 28 days or less which will be disregarded
- have made a valid application for indefinite leave to remain as a foreign or Commonwealth citizen discharged from HM Forces
- · meet the general eligibility criteria
- · not fall for refusal on grounds of suitability

### Suitability criteria

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For guidance on suitability requirements see attached links. Suitability requirements under Appendix Armed Forces are the same as those under Appendix FM plus the following subparagraphs from the general grounds for refusal: 320(3), 320(7B), 320(10), 320(11), 321(iii), 321(4A), 322(2), 322(3) and 323(i).

For more information see: Discharged members of the armed forces: eligibility criteria.

### Applicants refused settlement but granted limited leave to remain

If an applicant does not meet the suitability criteria for settlement but does meet them in respect of a grant of limited leave, you may grant limited leave to remain.

This will be granted for a period not exceeding 30 months and is not subject to restrictions on employment or recourse to public funds. See related link: HM Forces criminality.

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# Discharged armed forces members: settlement after entry: leave outside the rules

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This page tells you about considering cases outside the Immigration Rules for discharged members of HM Forces.

The following applies where an application under part 7 of the Immigration Rules, or Appendix Armed Forces, falls for refusal because the applicant has:

- overstayed for more than 28 days
- failed to apply within 2 years of discharge

### **Considering cases outside the Immigration Rules**

Following ministerial agreement you must consider if it is appropriate to grant an applicant settlement outside of the Immigration Rules in cases where the **only** reason for refusal under the rules is that the applicant has overstayed for more than 28 days and/or was discharged more than 2 years ago.

**Please note:** they must not be regarded an overstayer if they have not had any form of leave since they ceased to be exempt from immigration control. This is regardless of how long ago they were discharged.

In such cases where neither settlement nor limited leave is being granted, it may be appropriate to grant 28 days leave outside the Immigration Rules (code 3) in order to bring the individual back under immigration conditions.

It will be appropriate to consider granting settlement outside of the Immigration Rules when:

- the applicant has served a tour of duty in a conflict zone or been deployed on humanitarian duties within the 10 years before the date of application
- the only reason for refusal under the Immigration Rules is because the application is out of time and/or the applicant was discharged more than 2 years ago

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• it is not possible to show that the Ministry of Defence (MOD) or UKVI informed the individual of the responsibility to regularise immigration status on discharge

If further information is required to establish whether the applicant meets the criteria above, caseworkers should make further enquiries with the MOD.

The third bullet is unlikely to apply in cases discharged since March 2014 as MOD has taken steps since that date to make sure appropriate and timely advice is given to discharging personnel regarding their immigration responsibilities.

If, after considering the case, you consider that settlement should not be granted you must refer the case to your senior caseworker who will seek SCS authorisation for the refusal in line with existing guidance.

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### Medical discharge

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This section tells you the requirements an applicant needs to satisfy to be granted leave on medical discharge grounds.

### **Medical discharge**

To qualify for settlement the applicant must have been medically discharged by the Ministry of Defence (MOD) as a result of an injury or illness which is attributable to service in HM Forces and which either:

- came about due to deployment in an operational theatre (a place where military action takes place)
- did not come about due to deployment in an operational theatre but it is appropriate to grant leave to enter or remain following an assessment of the factors below:
  - o seriousness of the illness or injury
  - o the need for any further medical treatment in the UK
  - o availability of medical treatment in the individual's country of origin
  - the prognosis for recovery including whether the injury or illness will affect their ability to support themselves in their country of origin
  - o length of reckonable service completed at the point of discharge

### Applications refused settlement but granted limited leave to remain

Where the applicant does not qualify for settlement, limited leave to remain may be granted instead, if the following conditions are met:

- the applicant has been medically discharged
- the cause of the discharge was attributable to service
- it is appropriate to grant limited leave to allow further medical treatment or a recovery period before the applicant can return to their country of origin this will normally be granted for a period not exceeding 30 months and is not subject to restrictions on

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Compensation Scheme

employment or recourse to public funds

#### How to determine if the cause is attributable to service

The applicant or the MOD should provide evidence to confirm an injury was attributable to service, and, where applicable, that it came about due to deployment in an operational theatre (a place where military action takes place).

If an applicant has been given compensation under the Armed Forces Compensation Scheme (AFCS) following medical discharge, and evidence of that is seen, then you can accept it as evidence the injury was attributable to service.

The AFCS provides compensation for injury caused by service on or after 6 April 2005. Individuals can claim whilst still serving or after leaving service.

The War Pensions Scheme (WPS) provides compensation for injury caused by service on or before 5 April 2005. Individuals can only make a claim under the WPS after leaving service.

The AFCS and the WPS do not make any distinction between injuries caused on operations or those incurred during training. All individuals in receipt of an award under either scheme will have a letter from the Service Personnel and Veterans Agency showing details of their award.

### Injury not attributable to service

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Where the injury was not attributable to service then the application must be refused.

### Medical codes used by MOD

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This page tells you the medical codes used by the Ministry of Defence (MOD) when they consider discharging an individual on medical grounds.

You may see the following codes used by the MOD when they are discharging personnel on medical grounds. This does not necessarily mean the applicant meets the requirements for settlement or limited leave under Appendix Armed Forces:

- P3 fit for light or restrictive duties
- P4 pregnancy or maternity
- P7 fit for limited or restricted duties in the UK only
- P8 medically unfit for any form of military service
- P0 unfit for duty, but under medical care (not used by the Royal Navy)

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## Medical discharge: evidence required

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This page tells you what evidence an applicant needs to provide to demonstrate they have been medically discharged from HM Forces.

When an applicant submits their application they must provide evidence showing why they have been medically discharged from HM Forces.

If they do not provide this evidence, you must request the F Med 133, F Med 19 or F Med 23 medical report from the applicant.

These documents are official evidence from the Ministry of Defence (MOD) showing the circumstances and nature of the illness or injury.

The document must confirm that the injury or illness was attributable to their service in HM Forces and, where applicable, that it was sustained in an operational theatre (a place where military action takes place).

You will also find it helpful to request any Armed Forces Compensation Scheme assessment.

If the evidence supplied is still inconclusive you must contact the following to request further information:

- the applicant's individual unit
- the Service Personnel and Veterans Agency (SPVA) if the applicant has been discharged

The contact details for the SPVA are:

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SPVA Room 6205 In this section

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Service Personnel and Veterans Agency

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Norcross	
Thornton Cleveleys	
Lancashire	
FY5 3WP.	

# Medical discharge: Queen's Regulations

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This page tells you the Queen's or Navy Regulations under which an individual may be medically discharged from HM Forces.

Individuals in the British Army and Royal Air Force (RAF) may be medically discharged from service under one of the following Queen's Regulations:

#### Army

- QR9.381 'defect in enlistment procedure' a soldier who after enlistment or attestation is found to have been medically unfit for acceptance on account of a condition that was overlooked, inappropriately assessed or not declared by the soldier as part of his formal medical history
- QR9.385 ceasing to fulfil army medical requirements, that is medically unfit under existing standards
- QR 9.386 ceasing to fulfil army medical requirements, that is medically unfit under existing standards. If discharged under this Queen's Regulation they may 'at a later date improve and become fit for some form of service in time of emergency'
- QR9.387 ceasing to fulfil army medical requirements, that is permanently medically unfit for any form of army service

#### **RAF**

- QR2905(4) Officers and QE607(15)(a)(b) permanently below the medical standard required to conduct the full duties of their specialisation or unlikely to reach that standard within a reasonable time
- QR2905(3) Officers and QR607(22)(d)(ii) permanently below the medical standard required to conduct the full duties of their specialisation for reasons within their control or where the condition or disability is unlikely to be lasting
- QR2906(3) Officers and QR607(15)(b) permanently below the medical standard required to conduct the full duties of their specialisation or unlikely to reach that standard within a reasonable time, declined an offer of suitable alternative employment in the RAF or feel their career prospects are unacceptably affected through

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- circumstances beyond their control
- QE2905(4) Officers and QR607(15)(b) aircrew who can no longer fly because of a
  permanently reduced medical employment standard (MES) below A2, may as a once
  only option elect to be invalided as an alternative to retention

### **Navy Regulations**

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In the Naval Service, personnel are discharged using the regulations contained within Book of Reference 1991 – Instructions for the Royal Naval Medical Service – Chapter 8 Medical Boards.

The circumstances of an applicant's case must be evident from their F Med 23 report as this will provide the detail of diagnosis at time of discharge. The individual's Primary Health Care Information System (PHCIS) record will provide supporting evidence to the F Med 23.

## Ministry of Defence disciplinary procedures

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This page tells you about the Ministry of Defence (MOD) disciplinary procedures.

Disciplinary procedures take precedence over military discharge procedures.

If an applicant has been medically discharged from HM Forces, the Home Office accepts that no personal or disciplinary factors are involved.

You will need to consider cases which do involve evidence of criminal activity on their individual merits. For guidance on how to consider cases in which there are examples of criminality please see the following links:

- Military service offences
- · General grounds for refusal

### Suitability criteria

For guidance on suitability requirements see related links. Suitability requirements under Appendix Armed Forces are the same as those under Appendix FM plus the following subparagraphs from the general grounds for refusal: 320(3), 320(7B), 320(10), 320(11), 321(iii), 321(4A), 322(2), 322(3) and 323(i).

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# Grant or refuse entry clearance or indefinite leave to remain

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This page tells you about granting or refusing an application either made overseas to come to the UK or for indefinite leave to remain, as a discharged member of the armed forces.

### Grant entry clearance: indefinite leave to enter

You must grant entry clearance for indefinite leave to enter under paragraph 13 if the applicant meets all of the requirements contained in Appendix Armed Forces.

### Refusing entry clearance

If the applicant does not provide the required evidence to show they meet all the requirements of the relevant paragraph and/or they fail under suitability grounds the application must be refused.

There are no provisions for granting limited leave to enter to discharged members of HM Forces who fall to be refused indefinite leave to enter on suitability grounds or where the medical discharge criteria are not met.

### Suitability criteria

For guidance on suitability requirements see attached links. Suitability requirements under Appendix Armed Forces are the same as those under Appendix FM plus the following subparagraphs from the general grounds for refusal: 320(3), 320(7B), 320(10), 320(11), 321(iii), 321(4A), 322(2), 322(3) and 323(i).

### **Grant indefinite leave to remain**

You must grant indefinite leave to remain under paragraph 16 if the applicant meets all of the requirements contained in Appendix Armed Forces.

30 months leave to remain may be granted with no restrictions on access to employment or recourse to public funds:

• under paragraph 17 where the applicant only fails to meet the suitability requirements

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<ul> <li>in paragraph 8 or 9 in respect of a grant of indefinite leave to remain (but not a grant of limited leave to remain)</li> <li>where the applicant fails to meet the medical discharge criteria. See related link for the conditions to be met</li> </ul>	
For transitional arrangements see related link: Armed forces.	

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This page explains who to contact for more help with a specific case in the HM Forces: applications on discharge category.

If you have read the relevant Immigration Rules and this guidance and still need more help with this category, you must first ask your senior caseworker or line manager.

If the question cannot be answered at that level:

- entry clearance officers and caseworkers can email: armed forces policy team (see related link).
- Border Force officers can email: BF OAS enquiries (see related link)

Changes to this guidance can only be made by the guidance, rules and forms team (GRaFT). If you think the policy content needs amending you must contact the armed forces policy team, who will ask the GRaFT to update the guidance, if appropriate.

The MGT will accept direct feedback on broken links, missing information or the format, style and navigability of this guidance. You can send these using the link: Email: Modernised guidance team.

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This page tells you about this version of the 'HM Forces: applications on discharge' guidance and who owns it.

Version	3.0
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Cleared by director	Official – sensitive: information removed
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