

AMENDMENT 40
CHANGE 3

EXPLANATORY MEMORANDUM

1. The Army Pensions Warrant 1977 is the Prerogative Instrument on Pensions for the Army and it is the legal basis for the army version of the rules of the Armed Forces Pension Scheme 1975. It is amended whenever:

- (a) new rates of awards are authorised;
- (b) a change to the rules of the scheme is recommended;
- (c) amendments to the scheme rules are required in line with pensions legislation and regulation; or
- (d) editorial amendments are appropriate.

2. This is the second and final amendment to the Army Pensions Warrant which delivers the change in policy to allow Gurkhas, who have traditionally been members of the Gurkha Pension Scheme to belong to one of the two Armed Forces Pension Schemes (the Armed Forces Pension Scheme 1975 or the Armed Forces Pension Scheme 2005). The change arises in part from a change in the Immigration Rules by the Home Office in October 2004 (the Statement of Changes in Immigration Rules laid before Parliament on 18 October 2004 under section 3(2) of the Immigration Act 1971) allowing ex-Gurkhas with at least four years service to apply to re-enter the UK after discharge and remain indefinitely. This change took effect from 1 July 1997 when the Brigade of Gurkhas became a UK based force. The intention to allow Gurkhas who were in service on or after 1 July 1997 to transfer to one of the two Armed Forces Pension Schemes was the subject of a Ministerial announcement on 8 March 2007 (Hansard 8 March 2007, Col 141WS – 142 WS).

3. The Gurkha Pension Scheme is designed on the premise that the Gurkha will retire to Nepal and benefits are set accordingly. Following the change in the Immigration Rules, this presumption is no longer a reasonable one. Gurkhas with service on or after 1 July 1997 are therefore to be given the opportunity to transfer to one of the Armed Forces Pension Schemes. The choice of the July 1997 date reflects the change in Immigration Rules referred to above which itself acknowledges that after 1 July 1997 the expectation that Gurkhas would be discharged and retire in Nepal was no longer valid. New Gurkha recruits in 2007 were entitled to join the Armed Forces Pension Scheme 2005 from their date of entry.

4. Separate rules relating to Gurkhas who choose to transfer to the Armed Forces Pension Scheme 2005 are detailed in Statutory Instrument 2007 No. 2608. An amendment to this Army Pensions Warrant has already been introduced for Gurkhas who were in service on 1 October 2007 and who wished to transfer to the Armed Forces Pension Scheme 1975. Amendment 20, change 2, came into effect on 1 October 2007.

5. This amendment relates to:

- (a) Gurkhas who were in service on 1 July 1997 but who left the service before 1 October 2007, and
- (b) the dependants of Gurkhas who were in service on 1 July 1997 but who died in service before 1 October 2007 or in retirement before 1 March 2008,

who wish to transfer to the Armed Forces Pension Scheme 1975. Detailed rules on qualification for this offer to transfer are set out in the amendments, together with the scheme rules that will apply to individuals who opt to transfer.