

CHAPTER 8

PENSIONER IN PRISON OR FOUND GUILTY OF MISCONDUCT

GENERAL

08001. The details in this chapter have been retained for historical purposes but they have been updated at Paragraph 08009 to reflect the treatment of all other British Army personnel. Previously, a Gurkha pensioner imprisoned without trial on political or other grounds should in general be entitled to continue to receive any pension in issue until after trial in a court of law.

08002. Should a pensioner misconduct himself, with or without legal proceedings, such misconduct may constitute grounds for suspension or reduction of his or her pension.

RULES RELATING TO THE ENTITLEMENT TO PENSION OF PERSONS INCARCERATED WITH OR WITHOUT TRIAL

08003. A convicted and imprisoned pensioner is to be seen at least once in any 2 years period by an Officer, who is to prepare a Life Certificate for submission to Inf MCM Div, APC Glasgow through HQ BRIGNEPAL.

08004. Where a pensioner is imprisoned after conviction the pension payable to the family is not normally to exceed the family pension payable had he died, and the payee (wife, child or parent) of such a pension is to attest to the life of the pensioner and to having seen him on a stated date. The Commander, BGN is to make a recommendation under para 06002c to Inf MCM Div, APC if the conditions under which the pensioner is imprisoned are such as to warrant consideration of a greater payment to the family. Before such a recommendation is made, an officer must visit the pensioner and report in writing to the Comd, BGN. The Inf MCM Div is to submit the recommendation to the 'competent authority'. Every such recommendation is to be treated as a matter of urgency by all concerned.

08005. The date of imprisonment and duration of sentence (if known) are to be notified to the 'competent authority' and to Inf MCM Div, APC by HQ BRIGNEPAL, as soon as possible after they have been completed.

08006. The pension of pensioners imprisoned for offences of a political nature is not to be withheld without prior authority of the MOD SP Sec 2. The Commander, British Gurkhas Nepal is to report the circumstances of such is then to be submitted to MOD SP Sec 2 with the specific recommendation of the 'competent authority' for further consideration by that Branch.

RULES RELATING TO PENSIONERS CONSIDERED TO HAVE COMMITTED MISCONDUCT COMMITTAL TO PRISON

08007. In every case of misconduct of a pensioner in Nepal or India, the Commander, British Gurkhas Nepal is to consider the circumstances and make specific recommendations. The recommendation is to be sent to Inf MCM Div, APC for confirmation to the 'competent authority' with the case file, and is to comprise:

- a. A statement of the misconduct giving dates and the nature of the incident.
- b. Full particulars of the pensioner, and any other person involved if the information is relevant.

- c. The Commander's opinion of the nature and seriousness of the misconduct.
- d. The Commander's recommendation as to the withholding, in whole or in part, of the pension.

08008. A pension having been withheld in whole or in part as a result of such a recommendation may be reinstated only after receipt of such a recommendation from the Commander, British Gurkhas Nepal, of a recommendation to this effect, which is to give sufficient detail of the pensioners subsequent conduct to explain and justify the recommendation. The recommendation is to be sent to Inf MCM Div who are to submit it to the 'competent authority' together with the pensioners case file.

08009. The above regulations ceased to apply when the Brigade of Gurkhas became UK based from 1 July 1997. From that point the administration of the GPS followed the provision of an unalienable right to pension under the UK Pensions Act 1995 which came into effect on 6 April 1997. This Act protects the entitlement of an individual to an occupational pension earned during service. In line with the exceptions applied to other Armed Forces schemes the details of this provision are below:

- a. Where an active scheme member has been convicted of any of the following offences some or all of their GPS pension benefits may be forfeited:
 - (1) An offence in connection with employment which is certified by the Secretary of State either to have been gravely injurious to the State or to be liable to lead to serious loss of confidence in the public service.
 - (2) An offence of treason.
 - (3) One or more offences under the Official Secrets Acts 1911 to 1989 for which the member has been sentenced on the same occasion to a term of imprisonment of, or to two or more consecutive terms amounting in the aggregate to, at least 10 years.
- b. Survivor and/or dependants benefits may be subject to forfeiture if the survivor or dependant has been convicted of the murder, manslaughter, or unlawful killing of the member.