

**CHAPTER 15  
SECTION 2**

**PERSONS DISCHARGED FROM  
ARMED FORCES**

**1. INTRODUCTION**

This section deals with:

- members of the NATO armed forces who have been discharged from service (with particular reference to those already serving in the United Kingdom), and
- discharge from HM Forces in the UK and overseas.

**2. LEAVE TO ENTER AS A MEMBER OF NATO FORCES PRIOR TO DISCHARGE**

If a member of the NATO forces, who is *not* serving in the United Kingdom, arrives on leave *prior* to discharge from the forces and is identified as such, he should be given limited leave for two months on Code 3, and a **report should be submitted to BCPI.**

**2.1. CID Code**

- O Other person on limited leave to enter

**3. LEAVE TO REMAIN FOR MEMBERS OF NATO FORCES FOLLOWING DISCHARGE/SEPARATION**

**3.1. Applications for leave to remain by members of visiting forces**

Applications for leave to remain by members of a visiting force who have been exempt are dealt with by:

- \* **ICC6** – postal applications where the applicant wishes to take civilian employment with the forces (including requests for approval of separation on this basis and recognition of civilian component status). PEO deal with any applications made in person under their premium service; or
- \* **General Group** - if they wish to remain for any other purpose.

Leave to remain **cannot** be granted while a person is exempt under Section 8 of the 1971 Act.

**3.2. Procedure in separation cases**

Applications are normally received from members of the United States forces in advance of discharge. This is in order to meet United States regulations, which require tentative Home Office approval/refusal before making a decision. **Despite applications seeking**

***Home Office authority for discharge we can only decide whether or not to grant leave to remain under the Rules.***

If the applicant wishes to separate on the basis of civilian employment with the forces, it should be made clear that leave to remain will not be granted without evidence of a formal offer of a specific job.

***If leave to remain is to be granted the following notification of approval should be used:***

"I can confirm that on the information available at present this Department would have no objection to ..... being separated in the United Kingdom on ..... This Department is unable to endorse the passport of ..... while [he/she]\* is exempt from the main provisions of the Immigration Act 1971. However, ..... 's passport [will be retained in/should be sent to]\* this office [until the date of separation/to reach us by the date of separation or as soon as possible thereafter]\* [and returned to you]\* ."

***If it is decided not to grant leave to remain, the following notification should be used:***

"I regret that on the information available at present, this Department cannot agree to ..... being separated in the United Kingdom. .... is exempt from the main provisions of the main Immigration Act 1971 and [his/her]\* passport is returned herewith unendorsed."

\* **delete as appropriate**

### **3.3. Rights of appeal**

The decision to grant a person previously exempt from immigration control 28 days leave, employment prohibited, following discharge does not attract a right of appeal as it is not considered an immigration decision within the terms of the Nationality Immigration Act 2002.

### **3.4. Failure to apply for leave**

It is not an offence, on ceasing to be exempt from immigration control, to fail to apply for leave and a person failing to do so cannot be regarded as being here illegally. However, if such a person comes to notice they should be granted, without application on their part, limited leave for 28 days, employment prohibited, allowing them to make arrangements to leave the UK. This will bring them within the scope of the immigration control. If, by the end of that period, they fail to leave the UK and they have not applied for an extension of stay, they will become an overstayer and may be liable to administrative removal.

## **4. DISCHARGE FROM HM FORCES**

### **4.1 Discharge in the UK**

On leaving HM Forces, a person is no longer exempt from immigration control. They should be informed of this in their official letter of discharge and, if they are without the right of abode, told to send their passport to ICC1 in the Immigration and Nationality Directorate in order to regularise their status by being granted 28 days leave to remain, code 3 - employment prohibited. Their former Unit should send a copy of the discharge letter, giving a private contact address, separately to ICC1. If their passport is not received within three weeks they should be informed in writing that they are no longer entitled to exemption from the terms of the Immigration Act 1971 (which they enjoyed while enlisted) and told to submit their passport and regularise their position.

#### 4.2 **Advance notification of imminent and recent discharge**

Under new procedures ICC1 may receive advance notification by fax of the imminent discharge of a foreign or Commonwealth member of HM Forces, in which case they will grant 28 days leave to remain, employment prohibited (code 3), from the date of discharge. The ICC1 letter (ICD.3036) will normally be sent to the relevant discharging unit by fax where it will be handed directly to the person being discharged. Confirmation that this has occurred should be received back by fax, a copy of which should be placed on the personal file. See also paragraph 4.7 below for action to take regarding dependants.

If the date of discharge has already passed and a private contact address is known, 28 days leave to remain, employment prohibited should be granted from the date the ICC1 letter is sent. See also paragraph 4.7 on Dependents below.

#### 4.3 **Liability to administrative removal as an overstayer**

If, by the end of the 28-day period of code 3 leave granted on discharge, the person has neither left the UK nor applied for an extension of stay, they will become an overstayer and will be liable to administrative removal.

#### 4.4 **Settlement on discharge**

If at least 4 years service has been completed with HM Forces, an application for indefinite leave to remain (settlement) in the UK may be made under the HM Forces rule. When applying for indefinite leave to remain in the UK an applicant must have valid leave to enter or remain. See **Section 2A** of this chapter for further guidance on applying for settlement after discharge.

#### 4.5 **Discharge outside the UK**

Gurkhas are normally discharged in Nepal, unless there are compassionate factors that make return to Nepal inappropriate. Once discharged a retired Gurkha with at least 4 years service with HM Forces may apply for entry clearance for indefinite leave to enter the UK (settlement) under the HM Forces rule.

For further information on the requirements for settlement under the HM Forces rule please refer to **Section 2A** of this chapter.

#### 4.6 Definition of “the home forces”

For the purposes of this instruction, persons locally enlisted abroad should not normally be regarded as serving in “the home forces” within the meaning of the 1971 Act (please note, however, that Gurkhas **are** regarded as members of “the home forces” - see **section 1 paragraph 5.1** of this chapter)

#### 4.7 Dependants

Dependants of a person who is exempt from immigration control under section 8(4) of the Immigration Act 1971 remain subject to their initial leave to enter and conditions. They should obtain further leave under the Dependants Rules (see paragraphs 276AD – 276AI of the Immigration Rules) in the normal way while the head of the household is serving in HM Forces and exempt from control - see **section 1 paragraph 4** of this chapter.

Where details of the dependants of a member of HM Forces being discharged are known, their leave to enter/remain should be curtailed to 28 days, using form **ICD.2270**, in line with the code 3 leave granted to the person being discharged. However, dependants should remain on Code 1 conditions for this 28-day period. Notice of the curtailment should be faxed to the discharging unit for handing directly to the sponsor. Confirmation, by fax, that this has occurred should be requested. There is no right of appeal in this case.

Where discharge has already occurred, curtailment by letter can only be undertaken where there is a known current address and in such cases notice should be sent by recorded delivery.

If after discharge the ex-member of HM Forces is granted settlement under the HM Forces Rule, their dependants may apply for settlement in line (paragraphs 276R-276AC) – see **section 2A paragraph 10** of this chapter.