

CHAPTER 15 SECTION 2A – PERSONS SEEKING SETTLEMENT: HM FORCES

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1. INTRODUCTION

This section deals with applications from Gurkhas and foreign and Commonwealth nationals who seek settlement in the UK on discharge from HM Forces. It also explains the circumstances under which their dependants may apply for settlement.

On 25 October 2004 the Immigration Rules were amended to provide for all those with at least 4 years service with HM Armed Forces to apply for settlement in the UK after discharge. Paragraphs 276E to 276Q of the Immigration Rules refers.

Paragraphs 276E-K of the Immigration Rules relate to Gurkhas, who will continue to be recruited in Nepal; and paragraphs 276L-Q of the Immigration Rules relate to foreign and Commonwealth nationals who are normally recruited and discharged in the UK.

The Immigration Rules make provision in both parts for applications for settlement to be made either from overseas or from within the UK.

2. GURKHAS

For the purposes of the Immigration Rules ([Paragraphs 276E-K](#)) a Gurkha is a citizen or national of Nepal who has served in the Brigade of Gurkhas of the British Army under Brigade of Gurkhas' terms and conditions of service.

On 30 September 2004 the Prime Minister and Home Secretary announced a change of policy in respect of Gurkhas. Gurkhas discharged from the British Army in Nepal, on or after 1 July 1997 and with at least 4 years service with the British Army would be able to apply for settlement in the UK.

The 1 July 1997 cut-off date reflected when the Brigade of Gurkhas moved its headquarters from Hong Kong to the UK, and Gurkhas discharged on or after that date would therefore have had more opportunity to develop close physical ties with the UK.

NB See [Annex A](#) for discretionary arrangements for former Gurkhas discharged before 1 July 1997.

2.1 Settlement pre/on entry

The requirements for indefinite leave to enter ([paragraph 276F-G](#)) as a Gurkha discharged from the British Army are:

- (i) the applicant has completed at least four years service as a Gurkha with the British Army;
- and

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(ii) was discharged from the British Army in Nepal on completion of engagement on or after 1 July 1997. The requirement to have been discharged in Nepal is to be waived until the relevant paragraph in the Rules is amended; and

(iii) was not discharged from the British Army more than 2 years prior to the date on which the application is made; and

(iv) holds a valid United Kingdom entry clearance for entry in this capacity.

If requirements (i), (ii) and (iii) above are met entry clearance for settlement may be issued, and if that entry clearance is presented to the Immigration Officer on arrival the applicant will be admitted to the UK for settlement.

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2.2 Definition of “on completion of engagement”.

In (ii) above “on completion of engagement” means that a person was discharged from the armed forces in the normal course of events, after completing the agreed period of service and has been issued with a Certificate of Service.

2.3 Settlement after entry

The requirements for indefinite leave to remain (settlement) (paragraphs 276I-J) as a Gurkha discharged from the British Army are that:

(i) the applicant has completed at least four years service as a Gurkha with the British Army; and

(ii) was discharged from the British Army on completion of engagement on or after 1 July 1997. The requirement to have been discharged in Nepal is to be waived until the relevant paragraph in the Rules is amended; and

(iii) was not discharged from the British Army more than 2 years prior to the date on which the application is made; and

(iv) on the date of application has leave to enter or remain in the United Kingdom.

If all of the above requirements are met settlement may be granted.

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2.4 Applications lodged in advance

To assist HM Armed Forces personnel in making the transition to civilian life, settlement applications may be lodged up to 10 weeks before the discharge date, although settlement cannot be granted until after exemption from control has ceased upon their discharge.

These applications should be examined as soon as they are received and any additional enquiries made in good time to ensure that the decision to grant or refuse can be implemented the day or day after discharge.

Where a decision in principle is made to grant settlement, an **indicative letter** based on the proforma at [Annex B](#) should be sent to the applicant to assist them in making appropriate arrangements for employment after discharge and for liaising with the relevant authorities for housing, healthcare and benefits.

2.5 Medical discharge

In cases involving discharge from the Brigade of Gurkhas on medical grounds after 1 July 1997, please refer to the guidance at [section 10 below](#).

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Note: section 10 and [Annex D](#) provide guidance for dealing with settlement applications from medically discharged Commonwealth & foreign nationals (including ex-Gurkhas medically discharged on or after 1 July 1997)

2.6 Verifying details of service

If the applicant's original Certificate of Service (also called Army Form Book 108, Red Book or 'Lal' Book) has not been submitted - or it has been submitted but verification of an applicant's claim to the qualifying period of service or other information is required (for example, in relation to an award of a MoD disability pension or to find out more about why somebody's service was terminated prematurely) - checks may be made with reference to information provided directly by the MoD.

Checks may be carried out with the MoD in the UK or by reference to Records Office at the Brigade of Gurkhas main Recruiting Depot in Pokhara, Nepal. The authorisation form at [Annex E & F](#) may be adapted for this but in most cases it should not be necessary to use this means to obtain this information. Where this is considered necessary, a faxed copy of the service record showing the length of service and date of discharge (including any other relevant information required) should be obtained and attached to the applicant's file.

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3. DEPENDANTS OF GURKHAS

For guidance on dealing with applications from dependants of Gurkhas, please refer to [sections 11-13 below](#).

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4. GRANTS AND REFUSALS

4.1 Grant of Applications

Providing that an application meets the requirements of the rules or the requirements of the discretionary policy for Gurkhas discharged before 1 July 1997, settlement should be granted and documents processed in the normal way.

4.2 Refusal of Applications

If an applicant cannot satisfy the requirements of [paragraph 276F](#) of the Immigration Rules when applying for leave to enter, or paragraph 276I of the Rules when applying for leave to

remain as a Gurkha discharged from the British Army, and the exercise of discretion is not considered appropriate, settlement should be refused.

Suggested refusal wording:

“You have applied for settlement in the United Kingdom as a Gurkha discharged from the British Army but your application has been refused.

In view of the fact that you have not completed at least four years service as a Gurkha with the British Army; [*I am/the Secretary of State is*] not satisfied that you meet the requirements of paragraph [276F/276I] of the Immigration Rules.”

Paragraph reference 276F(i) or 276I(i)

In view of the fact that you were discharged from the British Army more than 2 years prior to the date on which the application is made; [*I am/the Secretary of State is*] not satisfied that you meet the requirements of paragraph [276F/276I] of the Immigration Rules.”

Paragraph reference 276F(iii) or 276I(iii)

In view of the fact that on the date of application you did not have leave to enter or remain in the United Kingdom, [*I am/the Secretary of State is*] not satisfied that you meet the requirements of paragraph 276I of the Immigration Rules.”

Paragraph reference 276I(iv)

4.3 Case Information Database codes

The following stats categories should be used:

Grant: 7DA
Refusal: X8

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5. APPEAL RIGHTS

For information on rights of appeal please refer to [IDI Chapter 12](#).

6. FOREIGN & COMMONWEALTH NATIONALS (NON-GURKHAS)

Paragraphs 276L-Q of the Immigration Rules replace what was previously known as the “Armed Forces Concession” under which those without right of abode could apply for settlement on discharge in the UK from the Armed Forces, on the basis of 4 years approved employment.

6.1 Settlement pre/on entry

The requirements for indefinite leave to enter (paragraphs 276L-M) as a foreign or Commonwealth citizen discharged from HM Forces are:

(i) the applicant has completed at least four years service with HM Forces; and

(ii) was discharged from HM Forces on completion of engagement; and

(iii) was not discharged from HM Forces more than 2 years prior to the date on which the application is made; and

(iv) holds a valid United Kingdom entry clearance for entry in this capacity.

If requirements (i) (ii) and (iii) are met entry clearance for settlement may be issued, and if the entry clearance is presented to the Immigration Officer on arrival the applicant will be admitted to the UK for settlement.

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6.2 Definition of “on completion of engagement”

In (ii) above “on completion of engagement” means that a person was discharged from the Armed Forces in the normal course of events, after completing the agreed period of service and has been issued with a Certificate of Service.

6.3 Settlement after entry

The requirements for indefinite leave to remain (paragraphs 276O-P) as a foreign or Commonwealth citizen discharged from HM Forces are:

(i) the applicant has completed at least four years service with HM Forces; and

(ii) was discharged from HM Forces on completion of engagement; and

(iii) was not discharged from HM Forces more than 2 years prior to the date on which the application is made; and

(iv) on the date of application has leave to enter or remain in the United Kingdom.

If all the above requirements are met settlement may be granted.

6.4 Applications lodged in advance

To assist HM Forces personnel in making the transition to civilian life, settlement applications may be lodged up to 10 weeks before the discharge date, although settlement cannot be granted until after exemption from control has ceased upon their discharge. These applications should be examined promptly as soon as they are received and any additional enquiries made in good time to ensure that the decision to grant/refuse can be implemented the day or day after discharge, as appropriate.

Where a decision in principle is made to grant settlement, an **indicative letter** based on the proforma at [Annex B](#) should be sent to the applicant to assist them in making appropriate arrangements for employment after discharge and for liaising with the relevant authorities for housing, healthcare and benefits.

6.5 Medical discharge

In cases involving discharge of foreign and Commonwealth service personnel on medical grounds please refer to the guidance at [section 10 below](#).

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7 DEPENDANTS OF FOREIGN & COMMONWEALTH NATIONALS (NON-GURKHAS)

For guidance on dealing with applications from dependants of foreign and Commonwealth service personnel please refer to sections [11-13 below](#).

8. GRANTS AND REFUSALS

8.1 Grant of Applications

Providing that an application meets the requirements of the rules, settlement should be granted and documents processed in the normal way.

8.2 Refusal of Applications

Where an applicant does not satisfy the requirements of:

- [paragraph 276L](#) of the Rules if applying for leave to enter; or
- [paragraph 276O](#) of the Rules if applying for leave to remain, as a foreign or Commonwealth citizen discharged from HM Forces; or
- other relevant Immigration Rules - e.g. [paragraph 281](#) (spouses and civil partners), [paragraph 297](#) (children), [paragraph 317](#) (parent, grandparent, other dependent relative);

and the exercise of discretion is not appropriate, settlement should be refused. The refusal text should refer to any consideration given to the application both under and outside the Immigration Rules.

Suggested refusal wording:

“You have applied for settlement in the United Kingdom as a foreign or Commonwealth citizen discharged from HM Forces but your application has been refused.

In view of the fact that you have not completed at least four years service with HM Forces, [*I am/the Secretary of State is*] not satisfied that you meet the requirements of [paragraph \[276L/276O\]](#) of the Immigration Rules.”

Paragraph reference 276L(i) or 276O(i)

In view of the fact that you were not discharged from HM Forces on completion of engagement, [*I am/the Secretary of State is*] not satisfied that you meet the requirements of [paragraph \[276L/276O\]](#) of the Immigration Rules.”

Paragraph reference 276L(ii) or 276O(ii)

In view of the fact that you were discharged from HM Forces more than 2 years prior to the date on which the application is made, [*I am/the Secretary of State is*] not satisfied that you meet the requirements of [paragraph \[276L/276O\]](#) of the Immigration Rules.”

Paragraph reference 276L(iii) or 276O(iii)

In view of the fact that on the date of application you did not have leave to enter or remain in the United Kingdom, [*I am/the Secretary of State is*] not satisfied that you meet the requirements of paragraph 276O of the Immigration Rules.”

Paragraph reference 276O(iv)

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8.3 Case Information Database codes

The following stats categories should be used:

Grant: 7DA

Refusal: X8

9. APPEAL RIGHTS

For information on rights of appeal please refer [to IDI Chapter 12.](#)

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10. MEDICAL DISCHARGE CASES

This section provides guidance on the consideration to be given to settlement applications from medically discharged foreign and Commonwealth nationals, including ex-Gurkhas medically discharged on or after 1 July 1997. It explains the circumstances in which the normal requirement in the Immigration Rules to have completed four years' service may be waived.

10.1 Medical grading codes

The following medical grading codes are used by the MoD when considering discharging personnel on medical grounds:

P3 - fit for light/restrictive duties;

P4 - pregnancy maternity;

P7 - fit for limited/restricted duties in UK only;

P8 - medically unfit for any form of military service;

P0 – unfit for duty but under medical care [Not used by RN].

Individuals in the Army and RAF may be medically discharged under one the following Queen's Regulations:

Army

QR 9.381 – 'Defect in enlistment procedure' – where a pre-existing medical condition and/or pre-disposition to developing a certain condition only becomes apparent after enlistment.

QR 9.385 - for re-allocation or discharge. Possible re-enlistment after 6 months. Trainees must maintain entry standards.

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QR 9.386 - unfit for any form of service. Discharge - possible re-enlistment after 6 months.

QR 9.387 - permanently unfit for service – possible re-enlistment only after 5 years.

RAF

QR 2905(4) Officers & QR 607(15)(a)(b) Ground Trades and NCA: Invaliding: Permanently below the medical standard required to conduct the full duties of their specialisation or unlikely to reach that standard with a reasonable time.

QR 2905(3) Officers and QR 607(22)(d)(ii): Medical – Non Invaliding: Permanently below the medical standard required to conduct the full duties of their specialisation for reasons within their control or where the condition/disability is unlikely to be lasting.

QR 2906(3) Officers and QR 607(15)(b): Election to Leave: Permanently below the medical standard required to conduct the full duties of their specialisation, 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 circumstances beyond their control.

QR 2905(4) Officers and QR 607(15)(b) NCA: Aircrew Right to Elect Invaliding: Aircrew who cease to be appointable to flying duties because of a permanently reduced MES below A2, may as a once only option to elect to be invalided as an alternative to retention.

Royal Navy/Royal Marines

In the Naval Service, personnel are discharged in accordance with the regulations contained in the Board of Reference (BR) 1991 – Instructions for the Royal Naval Medical Service – Chapter 18 – Medical Boards. The circumstances of RN/RM medical discharge cases should be evident from the applicant's F Med 133 and F Med 23 medical reports.

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10.2 MoD disciplinary procedures

Mod disciplinary procedures take precedence over military discharge procedures, so if an applicant has been medically discharged the UK Border Agency may generally accept that no personal or disciplinary factors are involved. Any cases where, for example, there is evidence of criminal activity, will need to be investigated thoroughly and decided on a case-by-case basis.

HM Armed Forces personnel are normally given 110 – 130 days notice of their medical discharge date. To assist the MoD and the medical dischargee in making the transition from service to civilian life as seamless as possible, applications for settlement from medical dischargees may be lodged up to 3 months before the discharge date. Although settlement cannot be granted until after discharge has taken place (due to exemption from control), these applications should be examined promptly as soon as they are received and any additional enquiries made in good time to ensure that the decision to grant/refuse can be implemented on the day or day after discharge.

Where a decision in principle is made to grant settlement, an **indicative letter** based on the proforma at [Annex B](#) should be sent to the applicant to confirm to OGDs, local authorities

and prospective employers that once settlement is granted, there will be no restriction to them accessing those public funds for which they may be eligible or from seeking employment.

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10.3 Evidence

If they have not already done so, applicants should be asked to submit their F Med 133 their F Med 19 (Army & RAF) – Medical Board Proceedings or F Med 23 (RN) – Medical Board Proceedings report as official MoD evidence of the circumstances and nature of their injury or illness. These should provide confirmation that discharge was as a direct result of injury sustained in an operational theatre or an illness that has been deemed attributable to their service in HM Armed Forces.

If the evidence supplied by the individual is inconclusive, the UK Border Agency should contact the individual's Unit if they are still serving or the **Service Personnel and Veterans Agency (SPVA)** if they have been discharged for further information using the details contained in [Annex C](#).

The contact details for the SPVA are:

Ann Morton,
SPVA,
Room 6205, Norcross,
Blackpool, FY5 3WP
Tel: 01253 332862

10.4 Consideration

The guidance below should be read in conjunction with the indicative table at [Annex D](#).

All decisions should be reviewed and approved by a senior caseworker.

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10.5 Medical discharge due to injury sustained on operations

Where a foreign or **Commonwealth** member of HM Armed Forces is medically discharged as a direct result of injury sustained during operations, the requirement for them to have completed four years' service in order to qualify for settlement should normally be waived.

Any cases of discharged servicemen or women in these circumstances that have previously been refused settlement will be reviewed in line with the above guidance where these are brought to the UK Border Agency's attention. The requirement to have been discharged no more than 2 years prior to the date of application would also be waived in re-consideration cases.

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10.6 Medical discharge due to an injury or medical condition attributable to service in HM Armed Forces.

- a. Cases where the exercise of discretion may be appropriate would include where discharge of a HM Armed Forces member who has completed initial training results directly from an injury sustained on duty but outside an operational theatre (e.g. during pre-deployment training) or from a medical condition attributable to their training or service. In such cases, it may be appropriate to exercise discretion to waive the 4 years' service requirement under the settlement rules, especially where the injury is of a serious nature, the long-term prognosis is poor or where there will be an ongoing need for medical treatment not available in the individual's country of origin.
- b. Where the injury or medical condition leading to discharge is attributable to service but of a relatively minor nature or the period of service completed is relatively short, waiving the 4 years' service requirement may not be appropriate.

All 'non-operational, but attributable' cases should be considered sympathetically on their individual merits with reference to the indicative table at [Annex D](#). Where cases lie somewhere in between the situations described in (a) and (b) above, caseworkers should use their judgment, giving weight to the following factors:

- the seriousness of the injury or condition;
- the need for any further medical treatment in the UK and the 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;
- the length of time already served at the point of discharge.

Where a substantial part of the required minimum four years' service has been served prior to discharge, it would normally be appropriate for discretion to be exercised to grant settlement in cases, even where the injury or medical condition involved is less serious.

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10.7 Discharge due to injury or medical condition sustained during initial training or due to a medical condition not attributable to HM Armed Forces service

Where discharge results from injury sustained **during initial training** or is due to a medical condition not attributable to service in HM Armed Forces, it would not normally be appropriate to waive the requirement to have completed four years' service prior to discharge for the purposes of considering an application for settlement.

However, where a substantial part of the minimum four years' service required has been served prior to discharge, discretion may be exercised to grant settlement. Please refer to indicative table at [Annex D](#).

This would also apply to an application from an individual medically discharged as a result of a pre-existing medical condition and/or if their pre-disposition to developing a certain condition only becomes apparent after enlistment.

10.8 Leave outside the immigration rules

Where the decision is made to refuse settlement but further medical treatment or a recovery period will be required before the applicant is able to return to their country of origin, a grant of Leave Outside the Rules (on code 1A - with permission to work and claim benefits) may be appropriate. The grant should be only as long as judged necessary and should not convey any expectation of further leave or eventual settlement. [See IDI Ch.1, section 14 for more information on LOTR.](#)

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10.9 Dependants

Where settlement or leave outside the rules is granted, those previously treated as a dependent spouse, civil partner, unmarried partner, same-sex partner or child will normally qualify for leave in line.

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11. DEPENDANTS OF FOREIGN & COMMONWEALTH NATIONALS (INCLUDING GURKHAS)

Applications for settlement from dependants of former foreign and Commonwealth HM Forces personnel (including discharged Gurkhas) are to be considered in line with an application for settlement submitted by the former HM Forces member.

On 1 January 2005 two new Rules took effect, which enable the spouse, civil partner or child dependants of those settled or seeking settlement under the HM Forces rule to apply for settlement in line. Further amendments to the Rules – effective from 31 March 2009 – extended this right to unmarried and same-sex partners.

New provisions were also introduced, from **31 March 2009**, enabling spouses, civil partners, unmarried partners, same-sex partners and children of a member of HM Forces to apply for settlement if their spouse, civil partner, unmarried partner, same-sex partner or parent has completed at least 5 years' continuous service. These provisions are set out in:

- **Paragraphs 276R to 276W - spouses, civil partners, unmarried and same-sex partners** of persons settled or seeking settlement in the United Kingdom in accordance with paragraphs 276E to 276Q (HM forces rules) or of members of HM forces who are exempt from immigration control under section 8(4)(a) of the Immigration Act 1971 and have at least 5 years' continuous service – [please see paragraph 12 below.](#)
- **Paragraphs 276X to 276AC - children** of a parent, parents or a relative settled or seeking settlement in the United Kingdom under paragraphs 276E to 276Q (HM forces rules) or of members of HM forces who are exempt from immigration control under section 8(4)(a) of the Immigration Act 1971 and have at least 5 years' continuous service – please [see paragraph 13 below.](#)

In addition to consideration under these provisions, applications for settlement from dependants should also be considered under the relevant provisions of the Immigration Rules - e.g. paragraph 281 (spouses and civil partners), paragraph 297 (children), paragraph 317 (parent, grandparent, other dependent relative) - before being considered under the discretionary arrangements set out below.

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12. SPOUSES, CIVIL PARTNERS, UNMARRIED AND SAME-SEX PARTNERS

To qualify for indefinite leave to enter or indefinite leave to remain in the UK as the spouse, civil partner, unmarried or same-sex partner of a person settled or seeking settlement under the HM Forces rule or of a serving member of HM Forces who is exempt from immigration control under [section 8\(4\)\(a\) of the Immigration Act 1971](#) and has at least 5 years' continuous service, the following requirements must be met:

- the applicant must be married to, or the civil partner, unmarried or same-sex partner of a person present and settled in the UK or who is being admitted for settlement or being granted settlement on the same occasion under the HM Forces rule;
- the parties to the marriage, civil partnership or relationship akin to marriage or civil partnership must have met;
- the marriage, civil partnership or relationship akin to marriage or civil partnership must have been formed at least 2 years ago;
- each of the parties must intend to live permanently with the other as their spouse, civil partner, unmarried or same-sex partner and the marriage, civil partnership or relationship akin to marriage or civil partnership must be subsisting;
- if seeking indefinite leave to enter, a valid entry clearance for entry in this capacity must be held;
- if seeking indefinite leave to remain, the applicant has leave to enter or remain in the UK.

Caseworkers should note the lack of any maintenance and accommodation requirements.

The requirement that the parties have been **married, in a civil partnership or relationship akin to marriage or civil partnership for at least 2 years** is consistent with the requirements of the general immigration rules for spouse/civil partners and PBS dependants applications. [Chapter 8, Section 9 Annex Z](#) provides further guidance for assessing unmarried and same-sex relationships, including what might be required as evidential proof. If the marriage, civil partnership or relationship akin to marriage or civil partnership has subsisted for less than 2 years the spouse, civil partner, unmarried or same-sex partner should be:

- (where the spouse has been granted settlement) granted a period of leave to enter or remain up to a maximum of 2 years on Code 1 in accordance with the requirements for spouses, civil partners, unmarried or same-sex partners of persons present and settled in the United Kingdom or being admitted on the same occasion for settlement ([paragraphs 281-289 of the Immigration Rules](#)); or
- (where the spouse is still serving) granted leave up to a maximum of 2 years on Code 1 in accordance with the requirements for a dependant of an exempt armed forces member ([paragraphs 276AD-276AF](#))

The applicant should be advised that they may apply **not earlier than one month** before the end of the probationary period, for indefinite leave to remain in the United Kingdom on the basis of the still subsisting marriage, civil partnership or relationship akin to marriage or civil partnership.

For definitions of “**present and settled**” in the UK, and “**intention to live permanently with the other**” please refer to [Chapter 8 Section 1](#).

NOTE: See paragraph 13.3 about the importance of dependants observing the stated purpose of their settlement visa.

In cases where there is reason to doubt that the marriage is genuine please refer to [Chapter 8 Section 1 ANNEX A](#).

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12.1 Polygamous marriages

Only one wife may be permitted entry to the United Kingdom under the provisions of the immigration rules for spouses. See chapter 8, Section 1, Annex C Polygamous and potentially polygamous marriages.

12.2 CID Codes

For statistical codes please see [Chapter 8 Section 1 paragraphs 4.9 and 4.11](#).

For examples of **refusal formulae** and CID refusal codes please refer to [Chapter 8 Section 1 Annex G](#).

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12.3 Widows, widowers and bereaved civil partners, unmarried and same-sex partners

Where an application for settlement in the UK is received from the widow, widower, civil partner, unmarried or same-sex partner of a deceased foreign or Commonwealth HM Forces member (including Gurkhas) and where their spouse or partner’s death occurred in connection with operational service, discretion will normally be exercised to grant settlement. This would include foreign and Commonwealth HM Forces members (including Gurkhas) killed, for example, during hazardous pre-combat exercises and manoeuvres or travelling to, from or around the combat zone, in addition to those killed during combat itself. Any other spouse or partner of a deceased serving or former member of HM forces would not normally meet the criteria for settlement in the UK under this immigration discretion and would therefore need to qualify under a different provision of the Immigration Rules.

In exceptional circumstances discretion may be exercised in individual cases where the spouse’s death was not in connection with operational service but there are strong reasons why settlement in the UK is appropriate. In assessing whether or not this is appropriate consideration should be given to the presence of the following factors:

- The applicant has spent a significant amount of time living in the UK accompanying their spouse during their service with HM Forces and has developed strong ties with the UK.
- There are close family living in the UK who are able to offer emotional and financial support.
- The applicant would find it difficult to function because of illness or disability without the help and support of relatives in the UK.

- The existence of a chronic medical condition where treatment in the UK would significantly improve the quality of life.

If one or more of these factors listed above are present, discretion may be exercised and settlement granted.

13. CHILDREN (paragraphs 276X-276AC)

To qualify for indefinite leave to enter or indefinite leave to remain as the child of a parent, parents or a relative present and settled, or seeking settlement in the UK under the HM Forces rule or of a serving member of HM Forces who is exempt from immigration control under [section 8\(4\)\(a\) of the Immigration Act 1971](#) and has at least 5 years' continuous service, the following requirements must be met:

The applicant is seeking indefinite leave to join, or remain with, a parent, parents or a relative in one of the following circumstances:

- both parents are present and settled in the UK, or being admitted for, or being granted settlement on the same occasion; **or**
- one parent is present and settled in the UK or is a member of HM Forces who is exempt from immigration control under section 8(4)(a) of the Immigration Act 1971 and has at least 5 years' continuous service, and the other is being admitted for, or being granted settlement on the same occasion or is a member of HM Forces who is exempt from immigration control under section 8(4)(a) of the Immigration Act 1971 and has at least 5 years' continuous service; **or**
- one parent is present and settled in the UK or being admitted for, or being granted settlement on the same occasion or is a member of HM Forces who is exempt from immigration control under section 8(4)(a) of the Immigration Act 1971 and has at least 5 years' continuous service, and the other parent is dead; **or**
- one parent is present and settled in the UK or being admitted for, or being granted settlement on the same occasion or is a member of HM Forces who is exempt from immigration control under [section 8\(4\)\(a\) of the Immigration Act 1971](#) and has at least 5 years' continuous service, and has had sole responsibility for the child's upbringing; **or**
- one parent or a relative is present and settled in the UK or being admitted for, or being granted settlement on the same occasion under the HM Forces rule or is a member of HM Forces who is exempt from immigration control under [section 8\(4\)\(a\) of the Immigration Act 1971](#) and has at least 5 years' continuous service, and there are serious and compelling family or other considerations which make exclusion of the child undesirable and suitable arrangements have been made for the child's care; **and**
 - the applicant is under the age of 18; **and**
 - the applicant is not leading an independent life, is unmarried, and has not formed an independent family unit; **and**
 - if seeking indefinite leave to enter holds a valid entry clearance for entry in this capacity; **or**
 - if seeking indefinite leave to remain has leave to enter or remain in the UK.

Caseworkers should note the lack of any maintenance or accommodation requirements.

June 2009

For the definition of “parent” please refer to [Chapter 8 Section 5](#).

For the definition of “present and settled” please refer to [Chapter 8 Section 1](#).

13.1 CID Codes

For statistical codes please see Chapter 8 Section 5 paragraphs 3.4 and 3.6.

For examples of **refusal formulae** please refer to [Chapter 8 Section 5 Annex U](#).

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13.2 Dependants over the age of 18

Dependants over the age of 18 of foreign and Commonwealth HM Forces members (including Gurkhas) who are not otherwise covered in this guidance would normally need to qualify for settlement in the UK under a specific provision of the Immigration Rules.

However, settlement applications from dependants over the age of 18 who are the children of servicing foreign and Commonwealth HM Forces members (including Gurkhas) who meet the requirements of a parent should normally be approved, provided the dependant has previously been granted limited leave to enter or remain in the UK as part of the family unit and they wish to continue to reside and be educated in the UK.

In exceptional circumstances discretion may be exercised in individual cases where the dependant is over the age of 18. In assessing whether settlement in the UK is appropriate consideration should be given to the following factors:

- one parent or a relative of the applicant is present and settled or being admitted for, or being granted settlement in the UK under the HM Forces rule;
- the applicant has previously been granted limited leave as a dependant of a member of HM Forces
- the applicant has been, and wishes to continue, pursuing a full time course of study in the UK.
- Refusal of the application would mean that the applicant would be living alone outside the UK and is financially dependant on the parent or relative present and settled, or being granted settlement in the UK under the HM Forces rules;
- The applicant would find it very difficult to function because of illness or disability without the help and support of their parent or close relative in the UK.

If one or more of the factors listed above are present, discretion may be exercised and settlement granted in the UK.

13.3 The importance for dependants of observing the stated purpose of their settlement visa

Where a settlement visa is issued to a dependant (including an overage dependant child or other adult relative), it should be made clear to them that the visa is only valid for travel to the UK:

- as the dependant of a main applicant **already** settled in the UK or who is a member of HM Forces who is exempt from immigration control under [section 8\(4\)\(a\) of the Immigration Act 1971](#) and has at least 5 years' continuous service, **OR**

- when accompanying the main applicant who is at the same time being admitted for settlement in the UK, **OR**
- when joining a member of HM Forces who is exempt from immigration control under [section 8\(4\)\(a\) of the Immigration Act 1971](#) and has at least 5 years' continuous service.

A person holding a dependant's visa but who is not joining or accompanying the main applicant (e.g. a former Gurkha) is liable to be refused entry under paragraph 321 of the Immigration Rules (false representations, deception, change of circumstances since visa issued, etc).

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13.4 Dependants of HM Forces members who naturalise as a British citizen whilst still serving

The position of dependants of foreign and Commonwealth HM Forces members alters if their sponsor naturalises as a British citizen whilst still serving. Their dependants cease to be eligible for limited leave under paragraphs [276AD-276AF or 276AG-276AI](#) (children) or for indefinite leave under paragraphs [276R-276W or paragraphs 276X-276AC](#) (children).

Serving foreign and Commonwealth members of HM Forces who wish their dependants to benefit from the provisions for settlement on the basis of their 5 years continuous service will therefore need to ensure that they do not acquire British citizenship before their dependants' applications for settlement have been decided.

Where the serving sponsor has been naturalised as a British citizen, their spouses, civil partners, unmarried and same-sex partners would need to apply for probationary leave to remain or enter (or indefinite leave, if they qualify) under [paragraphs 277-289 \(as spouses or civil partners\)](#) or [paragraphs 295AA-295O \(as unmarried and same-sex partners\)](#).

The position of **dependent children of serving HM Forces members who have acquired British citizenship** whilst serving, will depend on their age and place of birth.

Children born in the United Kingdom to a serving HM Forces member (parent) acquire British citizenship automatically at birth under [section 1\(1\) of the BNA 1981](#) by virtue of being born to a parent who is settled in the United Kingdom for nationality purposes. A child born to a former HM Forces member who has been discharged from duty and who has acquired indefinite leave to remain in the United Kingdom will also acquire British citizenship automatically at birth under [section 1\(1\) of the BNA 1981](#) by virtue of the parent being settled for nationality purposes.

Children born in the United Kingdom to a parent who, after their birth, becomes a serving HM Forces member are eligible to register as a British citizen whilst a minor under [section 1\(3\) of the BNA 1981](#).

A person, including those over the age of 18 years, born in the UK whose parent does not become a member of the armed forces or settled before that child reaches the age of 18 and who is not therefore eligible for British citizenship under section 1 of the BNA 1981 may be registered under section 1(4) of the BNA 1981 if s/he meets the requirements

of that section. (The applicant must not have been absent from the UK for more than 90 days in each of the first 10 years of their life).

Minors born outside of the United Kingdom who accompany a serving HM Forces member (parent) to the UK may be registered as a British citizen at the discretion of the Secretary of State under [section 3\(1\) of the BNA 1981 if](#), and only if, their parent subsequently naturalises as a British citizen under section 6 of the BNA 1981.

However, there are **no registration provisions for adult children over 18 years born outside the UK who accompany a serving HM Forces member (parent) to the UK**. Such persons will first need to apply for indefinite leave to remain or enter under the immigration rules (e.g. paragraph 317, or for discretionary treatment under paragraphs [276X-276AC](#) as described in paragraph 14.2 above) and then qualify for naturalisation under the normal route (e.g. fulfil the 3 or 5 years residence requirement as set out in section 6 of the BNA 1981).

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13.5 Orphans

Orphans of foreign and Commonwealth members of HM Forces (including Gurkhas) who are under the age of 18 would normally need to qualify for settlement in the UK under a specific provision in the Immigration Rules.

However, should a child of a servicing foreign and Commonwealth HM Forces member (including Gurkhas) become orphaned following the death of their parent in connection with operational service ([see paragraph 12.3.](#)), and compelling or other family considerations make it appropriate for the child to remain in the UK, then discretion may be exercised and settlement granted.

In exceptional circumstances discretion may be exercised in individual cases where the parent's death was not in connection with operational circumstances. There should be strong reasons why settlement in the UK is appropriate and consideration should be given to the presence of the following factors:

- The applicant has spent a significant time living in the UK accompanying their parent during their parents service with HM Forces and has developed strong ties with the UK;
- There are close family living in the UK who are able to offer emotional and financial support;
- The applicant would find it difficult to function because of illness or disability without the help and support of relatives in the UK;
- The existence of a chronic medical condition where treatment in the UK would significantly improve the quality of life.
- The applicant was, or is, pursuing a full time course of study in the UK and wishes to continue this study here.

If one or more of the factors are listed above discretion may be exercised and settlement granted.

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DISCRETIONARY ARRANGEMENTS FOR FORMER GURKHAS DISCHARGED BEFORE 1 JULY 1997

In May 2009 the Home Secretary announced that any Gurkha with more than four years service who had been discharged from the Brigade of Gurkhas before 1 July 1997 would be eligible for settlement in the UK.

Applications from former members of the Brigade of Gurkhas discharged before 1 July 1997 should be considered for the exercise of discretion under this guidance. These discretionary arrangements are supplementary to the existing provisions of the Immigration Rules.

This scheme recognises the unique nature of the service given by the Brigade of Gurkhas and is offered to them alone on an exceptional basis. It applies to those who served in the Brigade of Gurkhas from January 1948 when it became part of the British Army. Applications from former Gurkhas who were discharged before January 1948 should be considered on a case by case basis.

Discretionary settlement criteria

Settlement applications from former members of the Brigade of Gurkhas who were discharged before 1 July 1997 will normally be approved, provided the former Gurkha served for at least 4 years in the Brigade.

It is only where adverse information of a serious nature is received about the applicant - for example, evidence of any serious criminal activity - will the application normally be refused. In cases where there is evidence of serious criminal activity the normal threshold should be met in order for the case to be considered for refusal of settlement. That is a custodial sentence of at least 12 months if the offence was committed in the UK or, if committed outside the UK, the offence would have been punishable by a custodial sentence of at least 12 months if it had occurred within the UK. Cases where such information comes to light should be referred by caseworkers in the normal way.

Should an application be received from a former member of the Brigade of Gurkhas who is in receipt of a MoD disability pension, or who has a level 1 -3 award for gallantry but who has served less than 4 years' in the Brigade, discretion should normally be exercised and the settlement application approved.

Dependants

Discretion will normally be exercised and settlement granted in line with the main applicant for spouses, civil partners, unmarried and same-sex partners and dependant children under the age of 18.

Children over the age of 18 and other dependant relatives will not normally qualify for the exercise of discretion in line with the main applicant and would be expected to qualify for leave to enter or remain in the UK under the relevant provisions of the Immigration Rules, for example under paragraph 317, or under the provisions of Article 8 of the Human Rights Act. Exceptional circumstances may be considered on a case by case basis. For more information on the exceptional circumstances in which discretion may be exercised see Section 13.2

Widows and Orphans

Applications from widows and orphans of former Gurkhas should be considered in line with the guidance set out in Chapter 15 Section 2A. Where an application for settlement in the UK is received from the widow, widower, civil partner, bereaved unmarried or same-sex partner or orphan of a deceased Gurkha and where the latter's death occurred in connection with operational service, discretion will normally be exercised to grant settlement.

Where the former Gurkhas' death was not in connection with operational service their dependants would not normally qualify for entry under the terms of this guidance and would be expected to qualify under another category of the Immigration Rules (for example, paragraph 317 if they have close family in the UK). Exceptional circumstances may be considered on a case by case basis. For more information on the exceptional circumstances in which discretion may be exercised see Section 12.3 and 13.5.

Indicative letter to send to applicant whose application has been considered and where an *in principle* decision has been made to grant settlement, subject to any other factors coming to light. This letter is not to be used where, on the evidence available, there is reason to believe that a grant of settlement is unlikely to be appropriate.

To whom it may concern

Name: **XXXXX XXXXX**
DOB: **dy/mn/yr**
Nationality: **Nationality**
Service no: **No.**
Unit: **Unit Name**
Address: **Full Address**

This letter confirms that the above named is currently serving with *Unit name* and has applied for indefinite leave to remain in the UK in anticipation of *his/her* discharge from H M Armed Forces on **date of discharge**.

As a member of HM Armed Forces (HMAF), XXXX is exempt from immigration control under section 8(4)(a) of the Immigration Act 1971 and it will not therefore be possible to complete processing of his/her application until after he/she is discharged from HM Armed Forces. Although it is not possible to guarantee the outcome of an application before the final decision, I can however confirm that preliminary consideration of the information and evidence submitted in support of *his/her* application indicate that XXXX is likely to be granted indefinite leave to remain ('settlement') very shortly after their *date of discharge*. In the event of indefinite leave being granted, this will be notified to XXXX by means of an endorsement placed in their passport which will be returned to the applicant as soon as possible after their discharge date

So whilst not providing a guarantee, this letter serves to indicate that settlement is likely to be granted and is issued to assist XXXX in making appropriate arrangements for employment after discharge and for liaising with the relevant authorities for housing, healthcare and benefits.

[* I can also confirm that an application for settlement on behalf of his/her dependants has also been submitted and if approved they would normally be granted settlement in line with XXXX, subject to the proviso that his/her wife/husband/civil partner should have been married/in a civil partnership with XXXX for the two years prior to his/her discharge.]

Please do not hesitate to contact this office should further information be required.

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Medical discharge proforma for completion by MoD discharging unit or SPVA (if discharged)

Dear *Applicant title /name*

In order that the UK Border Agency can consider your application for settlement in the light of all the relevant information about your case, I should be grateful if you would sign and forward this request for further information to your discharging unit or (if already discharged) to the Service Personnel and Veterans Agency (SPVA) who should return the completed form to the UK Border Agency at the address below. SPVA address: Service Personnel and Veterans Agency (SPVA), SPVA, Room 6205, Norcross, Blackpool, FY5 3WP

I agree to the MoD's disclosure to the UK Border Agency of the information indicated below.

(Signature)

(Date)

(Print name)

(Unit)

(Service number)

To: RN/Army/RAF discharging unit or SPVA. Please supply the following information to the UK Border Agency in relation to my case.

- date of enlistment, date of discharge, length of service at date of discharge
- terms of discharge and corresponding key to what the terms imply
- details of injury/injuries/medical condition
- circumstances of injury sustained/illness (in operational theatre, in training, off-duty)
- whether or not attributable to service
- enclose copy of F Med 133 and * F Med 19 (Army / RAF) or F Med 23 (RN) medical report or other independent medical report (*delete as applicable)
- available evidence of current condition and likely prognosis
- indication of availability of any further treatment required in country of origin
- any relevant personal conduct issues including any criminal activity
- any other (non-medical) factors involved in decision discharge
- Signature of Unit CO
- Unit contact details

Please return this form to: **Caseworking Teams SET 1 – 3 (Armed Forces), UK Border Agency, 7th Floor, Lunar House, 40 Wellesley Road, Croydon, CR9 2BY**

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Table to assist consideration of HMAF ‘medically discharged’ cases (see section 11) according to:

- **circumstances of injury/medical condition**
- **length of service completed at date of discharge**

Notes: table assumes applicant meets requirements for settlement (**paragraphs 276F - 276Q**) other than requirement to have completed 4 years’ service.

A grant of limited Leave Outside the Rules on code 1A would give entitlement to work and claim benefits pending medical treatment, but not lead to settlement.

SOURCE OF INJURY/MEDICAL CONDITION	PERIOD OF SERVICE PERIOD COMPLETED AT DATE OF DISCHARGE						
	before completion of initial training	end of initial training - <1 yr	1 yr - < 2 yrs	2 yrs - < 3 yrs	3yrs - < 3yrs 6m	3yrs 6m - <3yrs 9m	3 yrs 9m – < 4 yrs
within operational theatre	N/A	Settlement normally appropriate	Settlement normally appropriate	Settlement normally appropriate	Settlement normally appropriate	Settlement normally appropriate	Settlement normally appropriate
outside operational theatre <i>attributable</i> to service in HMAF	Settlement normally inappropriate unless very serious or catastrophic injury involved <i>Possible grant of limited leave outside the rules to complete treatment</i>	Settlement may be appropriate - depending on degree of injury/illness and prognosis <i>especially if applicant needs ongoing medical treatment post-discharge.</i> <i>Possible grant of limited leave outside the rules to complete treatment</i>	Settlement may be appropriate - depending on degree of injury/illness and prognosis <i>especially if applicant needs ongoing medical treatment post-discharge.</i> <i>Possible grant of limited leave outside the rules to complete treatment</i>	Settlement normally appropriate depending on degree of injury/illness and prognosis <i>especially if applicant needs ongoing medical treatment post-discharge.</i>	Settlement normally appropriate depending on degree of injury/illness and prognosis <i>especially if applicant needs ongoing medical treatment post-discharge.</i>	Settlement normally appropriate even where injury/illness relatively minor	Settlement normally appropriate even where injury/illness relatively minor
outside operational theatre <i>non-attributable</i> to service in HMAF	Settlement normally inappropriate <i>Possible grant of limited leave outside the rules to complete treatment</i>	Settlement normally inappropriate <i>Possible grant of limited leave outside the rules to complete treatment</i>	Settlement normally inappropriate <i>Possible grant of limited leave outside the rules to complete treatment</i>	Settlement normally inappropriate <i>Possible grant of limited leave outside the rules to complete treatment</i>	Settlement may be appropriate <i>Possible grant of limited leave outside the rules to complete treatment</i>	Settlement may be appropriate	Settlement <i>may</i> be appropriate (even where injury/illness relatively minor)

Authorisation Form to be completed by a former Gurkha seeking indefinite leave

Application Reference (if known): _____

Dear Applicant title /name

In order that the UK Border Agency can consider your application for settlement in the light of all relevant information about your case, I would be grateful if you would sign and return this form as quickly as possible. It authorises the UK Border Agency to obtain a copy of documentary material held by the Ministry of Defence that relates to your length of service in the Brigade of Gurkhas. This information will be used solely in relation to your application for indefinite leave to enter or remain in the United Kingdom.

I have understood the above and agree to the MoD Record Office's disclosure to the UK Border Agency (UKBA) of information requested by UKBA in connection with my application for indefinite leave to remain or enter, as indicated below.

(Applicant signature)

(Date)

(Service number)

(Print name)

(Date of Birth)

(former Gurkha unit)

Please return this completed form to:

EC POST ADDRESS

OR

SET 1-3 (Armed Forces) UK Border Agency, 7th Floor, Lunar House, 40 Wellesley Road, Croydon, CR9 2BY
United Kingdom

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INFORMATION REQUEST TO GURKHA RECORDS OFFICE, POKHARA

To: GURKHA RECORDS OFFICE.

From: UK BORDER AGENCY OFFICER (tel:)

Applicant name: XXXXXXXXX

Date of Birth: XXXXXXXXX

Service number: XXXXXXXXX

Former Unit(s): XXXXXXXXX

1. I attach a signed letter, authorising disclosure of information held by the Gurkha Records Office, relating to the above named.

2. I would be grateful if you would supply by secure *post to the address below** the following information required by the UK Border Agency:

* a copy of information and documents held relating to the above named's service record showing the length of service and date of, and reason for, discharge

* _____

3. Please complete, sign and date below.

To be completed by Records Officer

I hereby attach a copy of information requested by the UK Border Agency relating to the above named comprising _____ sheets in total.

Signature

Print full name

Position

Date

4. Please return this completed form and information requested to:

EC POST ADDRESS or

**SET 1-3 (Armed Forces) UK Border Agency,
7th Floor, Lunar House, 40 Wellesley Road, Croydon, CR9 2BY, United Kingdom**

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