



House of Commons
Home Affairs Committee

The rights of Gurkhas to settle in the UK

Oral and written evidence

4 November 2008

*Timothy Heaver, Martin Howe, Laxmi Prasad
Sharma, Chief Superintendent Kevin Hurley,
and Gyan Bahadur Sherchan*

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The Home Affairs Committee

The Home Affairs Committee is appointed by the House of Commons to examine the expenditure, administration, and policy of the Home Office and its associated public bodies.

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Oral evidence

Taken before the Home Affairs Committee on Tuesday 4 November 2008

Members present:

Keith Vaz, in the Chair

Ms Karen Buck
Mr James Clappison
Mrs Ann Cryer
David T C Davies
Mrs Janet Dean
Patrick Mercer

Gwyn Prosser
Bob Russell
Martin Salter
Mr Gary Streeter
Mr David Winnick

Witnesses: **Mr Timothy Heaver**, N C Brothers & Co, Solicitors, **Mr Martin Howe**, Howe & Co, Solicitors, **Mr Laxmi Prasad Sharma**, ex-Gurkha and member of the United British Gurkhas Ex-Servicemen's Association, **Chief Superintendent Kevin Hurley**, Metropolitan Police, and **Mr Gyan Bahadur Sherchan**, ex-Gurkha and member of the Gurkha United Forum, gave evidence.

Q1 Chairman: This is a one-off session on the rights of Gurkhas to settle in the United Kingdom. The evidence session has been proposed in order to allow the Committee to question witnesses on the case for allowing all Gurkha ex-servicemen the right to settle in the United Kingdom and the implications for doing so. I would like to thank all our witnesses for coming to give evidence today. Because we have only an hour's evidence session, we are proposing to ask Members of the Committee to address their questions to individuals rather than having everyone comment on every single question—otherwise we will be here all afternoon and not able to be present at Mr Salter's meeting. Could I first of all ask Mr Howe to explain to the Committee what the High Court judgment on 30 September means for Gurkhas.

Mr Howe: Could I make a couple of comments on context. The Gurkhas have served Britain loyally for the last 200 years. This is not a new matter. The Gurkhas have a fierce reputation as fine soldiers; they are known as the bravest of the brave. Their motto is: It is better to die than to live a coward. They have died for Britain. 50,000 of them have died for Britain. 150,000 of them have been seriously wounded in battles over the last 200 years defending our interests. They are our soldiers.

Q2 Chairman: Thank you. Can you go on to answering the question that I put to you now.

Mr Howe: Yes. By 2004 it was obvious that there was a significant injustice in respect of Gurkhas. On discharge from the Army, Gurkhas were not permitted to settle in the UK. That was in stark contrast to the position for all other foreign soldiers in the Army, who are allowed to settle in the UK after four years' service in the Army anywhere. That injustice was becoming a clamour, through parliamentarians, through the public, and through the press. A case was brought to challenge the 2004 policy that had been put in place. In 2004 the Home

Secretary properly announced that Gurkhas who were discharged post-July 1997 had a right to settlement here on service of four years in the Army.

Q3 Chairman: Mr Howe, this is a long introduction. We are aware of the history and we will have other people asking questions. If you could just answer the questions that the Committee give you. What are the implications for the decision on 30 September?

Mr Howe: The implication is that the discretionary policy in respect of pre-1997 Gurkhas who had retired was torn up. It was declared unlawful and irrational. It was declared not transparent, not clear. Your Committee here can make recommendations that will allow the new policy to be put in place. I urge you to return to the position that the Home Secretary clearly contemplated in September 2004, and that is to treat all Gurkhas the same.

Q4 Chairman: The answer to my question is: the implication of the decision on 30 September is to cast doubt on the policy of the Government.

Mr Howe: It is not to cast doubt, Sir. The policy has been declared unlawful. It no longer stands. It is quashed. It is gone.

Chairman: Thank you. If I could hold you there for a moment, other Members will come in.

Q5 Martin Salter: It was undoubtedly an historic decision in the High Court on 30 September. The Home Office note to us says that Blake J's judgment confirmed that the July 1997 cut-off date is fair and not discriminatory; however it did rule that the guidance applicable to Gurkhas discharged before 1997 was unlawful because it was irrational and insufficiently clear. Could you explain for us in lay person's terms what that means and what the Government are required to do as a result of that judgment. As I understand it they are required to produce new guidance and not necessarily a new

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policy, even though we want them to produce a new policy.

Mr Howe: The discretionary policy that existed from 2004 and that was being applied to applications made by pre-1997 retirees is unlawful. That can no longer be applied. A new discretionary policy needs to be prepared.

Q6 Chairman: Is that implicit in the judgment of the court? That is what Mr Salter is asking.

Mr Howe: The order of the court is that the policy is declared unlawful and the decisions made pursuant to it have been quashed. The judge then, because of the urgency, asked the Home Secretary to produce a new policy and review decisions by the end of this year. We are talking, in part anyway, about ageing Gurkhas. Seven Gurkhas have died waiting for that decision. In fact, I was told yesterday that another Gurkha who was affected by this policy has died.

Q7 Chairman: Since 30 September another Gurkha has died.

Mr Howe: Yes.

Q8 Chairman: Awaiting the decision.

Mr Howe: These men live in remote parts of Nepal, in hilltops where they do not have the same level of communication as we might have.

Q9 Patrick Mercer: I will address my question to Mr Sharma and Mr Sherchan. Gentleman, what is the particular appeal of seeking to serve or serving in the Gurkha regiments?

Mr Sharma: As Mr Howe said, the history goes back 200 years and even beyond, when the Gurkhas started serving this country. The Gurkhas have not been just taken in as the great Army of the world, the British Army, because the Gurkhas have proved from the beginning of time—even within this room we have two Victoria Cross winners—to have devoted their lives to serve this nation and to protect their comrades in arms in the battlefield. My father served in the Army Medical Corps before 1946 and retired from India. I served because I thought it was a good cause to serve. For many others, mostly all the Gurkhas, this is a generation after generation sort of thing, going into the brigade one after another. Father joins the British Army and he passes the story onto his son, and the son goes to join the Army and then, so does his son. This is the making of the history within the Gurkhas, to the British Army and to the world. This is just not an imagination of somebody else saying that the Gurkhas are the bravest of the brave. They have proved themselves.

Q10 Patrick Mercer: Thank you. Mr Sherchan, what is your view on this?

Mr Sherchan: As Mr Sharma said, it is traditional to join the British Army, like I was. I have historical evidence in my hand here. Four of my family served in the British Army—three of us have retired and one is still serving. One of my brothers retired in 1979, serving 16 years. He has lived in the hillside and he

does not want to come here because of the language barrier on his ability to work in this country and I do not suggest to come here. I served for 29 years. I retired last year. Probably I forget the other things that appeal but it is something like traditional, like we follow the step, anyone, and the able boys would like to join in the British Army. That is all.

Q11 Patrick Mercer: Why would a Nepalese recruit choose to serve or prefer to serve, if that is the case, in the British Gurkha battalions as opposed to the Indian Gurkha battalions or indeed in the Nepali Army?

Mr Sherchan: It is our views that joining the British Army is far better than the Indian Army. That is straightforward. The British country is better than the Indian country, I think that is a straightforward issue. We expected the British Government and the MOD would treat better than the Indian government. That is quite a straightforward issue.

Q12 Patrick Mercer: Mr Sharma?

Mr Sharma: It is basically the same as he is trying to say, but one thing else is that it works on the both sides, I guess. The Gurkhas were not simply taken into the British Army as for granted. During the early eighteenth century, when there was a war going on between then Nepal and the British forces ruling India, they tried to get into Nepal, and the Nepalese soldiers of those days defended the country so bravely that, from then on, the British Government decided that rather than fighting these people against, why not take them in, because they are the best ones. The British ruled throughout the world. They have scrutinised everybody but the Gurkhas.

Q13 Patrick Mercer: What are the pay differentials between the British Gurkha regiments, the Indian Army Gurkha regiments and the Nepali Army?

Mr Sharma: The pay was basically paid in similar terms. Until when I was serving, until recently, the pay was basically the same as in Indian pay terms. The pension was the same as to the Indian soldiers who retired from there. But what really matters is that if I happened to come to the UK from Hong Kong, my salary was not raised, my overseas allowance was raised. That was the only difference. There was no difference in pay. When you were serving in Hong Kong, it was of course a little higher than the Indian soldiers because of the allowance. It was not my pay. The basic pay was compared as equal to that of the Indian soldiers.

Q14 Mr Streeter: How long have you been living in the United Kingdom and do you both have the right to settle here?

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Mr Sharma: Yes¹.

Mr Sherchan: As I said, my first brother joined the Army and left in 1979, serving for 16 years. The Government have allowed him to come to this country but he still does not want to come in this country. He does not want to leave Nepal. I did not suggest to him to come back to this country because his ability to work and live in this country and everything else. I myself served for 29 years. I retired last year. I receive £200 a month pension. I probably have gone a bit too far the other side, but I have to explain the situation, the experience. £200. My service counted for just 19 years in all because of the GOTT (the Gurkha Option To Transfer out of the Gurkha Pension Scheme) package that is in issue. I have not gone back to my country for 13 years because I feel that the UK, is my country. Today, for the first time, I have been in the Parliament. I feel this is my Parliament. My eldest brother does not want to come here because he is tied to Nepal and feels that is his country, that is his own. I feel this is my country and I do not want to go back to my original country. One of my brothers left the Army in 1995. He is here with me, but he has left his son back to Nepal because the policy, the MOD Government policy, did not allow him to come in this country to join his family because it is a barrier. My eldest son joined the Army and has served for nine years now. He is serving for a general in Italy. Four members of my family are each treated differently under the policy of the Government and the headquarters of Gurkhas.

Q15 Mr Streeter: Mr Sharma, could you answer that question and tell me why Gurkhas want to come and settle in the UK. I know it is a fabulous country but then, I imagine, so is Nepal. What is your story and why do you all want to come here?

Mr Sharma: It is the service that should be recognised. The loyalty, the bravery, the gallantry should be recognised. Over the period of time we have developed the homely attachment to this country. The sentimental values should be recognised, as far as I can think of. We regard Britain as our second home and, rather than going to use our skills learned in the British Army elsewhere, why not come to this country and serve the country again in various parts? There are ample opportunities here, ample places, various places where we can go and devote ourselves into those kinds of areas where this country will be protected again.

Mr Streeter: Thank you very much.

Q16 David Davies: Mr Sharma and Mr Sherchan, how many Gurkhas do not meet the 1997 cut-off date for settlement rights? Of that number who do not meet that requirement, what percentage would you say have stronger ties with the United Kingdom?

Mr Sherchan: I would not be able to give you neither a rough number nor an exact number on that.

Q17 Chairman: Can anyone give us a number?

Mr Heaver: I think there is a general problem with figures. The MOD have put forward 26,000, approximately, ex-Gurkhas with service pensions, including widows and orphan children.

Q18 Chairman: Prior to July 1997 it was 26,000?

Mr Heaver: No, it may be a little bit higher because—

Q19 Chairman: What is a little bit higher?

Mr Heaver: The MOD then say that there are 10,000 Gurkhas receiving charitable welfare pensions and possibly 8,000 not receiving a pension.

Q20 Chairman: What is the figure then?

Mr Heaver: Nobody really knows.

Q21 Chairman: What is a rough sum? Somebody must have some figure.

Mr Heaver: Anything from 35,000 to 46,000.

Q22 Chairman: Does that include dependents?

Mr Heaver: No.

Q23 Chairman: 30,000 to 40,000.

Mr Heaver: 46,000.

Q24 Chairman: 46,000 Gurkhas. Roughly how many dependents to each Gurkha?

Mr Heaver: Assume a wife and two children, so we are talking a maximum of in the region of 200,000 to 220,000. That is the maximum possible.

Q25 Chairman: 200,000.

Mr Heaver: When there was a strict cut-off, well advertised in Nepal, that everybody had to make their applications before October 2006, approximately 4,000 applied in Nepal and a total of 6,000 in total.

Chairman: Thank you.

Q26 David Davies: Sir, who is funding the legal challenges and the legal case at the moment?

Mr Heaver: The challenges involving Mr Howe's company and myself are predominantly funded by the legal aid. My Firm receives no public funding.

Q27 David Davies: That is fine. Thank you. Mr Sherchan, I am trying to understand the difference in pensions between Gurkhas and British Army soldiers. Could you give me a rough idea of what would be a typical wage paid for, say, a teacher in Nepal.

Mr Sherchan: A teacher?

Q28 David Davies: Yes. For example, what would a teacher in Nepal be paid?

¹ Mr Sharma later stated that "I have been living in the UK since March 2007 but I do not have the right to settle here. My settlement application was refused by the Home Office reasoning that I do not have close ties with Britain. My appeal is waiting."

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Mr Sherchan: I do not know. As I say, I have not gone back to Nepal in 13 years. In my time, it was 700 or 800 rupees for a head teacher. In my earlier days, 29 years ago.

Q29 David Davies: Can you tell me, Mr Sharma, what would be an average?

Mr Sharma: In present day Nepal there are various schools.

Q30 David Davies: I used a teacher as an example, but a police officer or a teacher or something similar.

Mr Sharma: I would like to put it this way, the bottom line is the government runner, the office runner in government offices, would normally get about 7,000 Nepalese rupees this day, in present day Nepal.

Q31 David Davies: What would that be in sterling? Roughly.

Mr Sharma: About £70.

Q32 Chairman: Would that be per month or per week?

Mr Sharma: That is a month.

Q33 David Davies: A typical wage in Nepal would be £70 a month. That probably explains why the pension is lower and looks low to somebody—

Mr Sharma: I think this is very irrelevant to compare a Nepalese government worker to a British Army soldier.

Q34 Chairman: Mr Sharma, we are a Select Committee, we are inquiring, so we are able to ask these questions.

Mr Sharma: Yes, Sir. I am sorry.

Q35 Chairman: We would just like answers to those questions.

Mr Sharma: As a soldier in the British Army, I would still say that it might sound a little bit irrelevant. A soldier who serves in the British Army, other than the Gurkhas, has a higher pension, a lot higher, about six times higher than a Gurkha soldier who retires in 15 years point. A Gurkha soldier barely gets £100 a month. I would still say this is very low. This is very low. Comparing a Nepalese civil servant's salary to a British soldier, it would be unrealistic for various reasons. Nepal's economy depends on the Nepalese government, how they pay their employees is entirely up to them.

Chairman: Indeed. We will pursue that later.

Q36 Patrick Mercer: How would the pension of a British Gurkha soldier compare with the pension of an Indian Gurkha soldier?

Mr Sharma: The Indian Gurkha soldiers receive the same pension as the Indian soldiers, so there is no difference in pay, pension and other allowances.

Q37 Chairman: How much would that be? I think Mr Mercer would like to know how much that is roughly.

Mr Sharma: If a soldier retires—and I am not really clear about how much exactly—this should be about 8,000 or 7,000 Nepalese rupees for a soldier.

Q38 Chairman: Again, about £70 a month.

Mr Sharma: Something like that, yes, for an Indian soldier.

Patrick Mercer: How does that compare to a British Gurkha retiring?

Q39 Chairman: A British Gurkha retiring at the moment, what would their pension be?

Mr Sharma: That is £100, I think, currently. Mr Heaver would have—

Q40 Chairman: Mr Heaver, how much is it a month?

Mr Heaver: For a rifleman, it is about £140, but I would make the point that Laxmi Sharma does not receive an Army pension.

Q41 Chairman: We are not talking about Mr Sharma now, we are talking about the figures. It is about double, is it?

Mr Heaver: It is about double for those who receive pensions. There is a considerable number, even on the MODs figures, who do not receive a pension. That includes Laxmi Sharma.

Chairman: We will be coming on to pension rights in a minute. Does that answer your question?

Patrick Mercer: It does. Thank you.

Ms Buck: One of the questions we are keen to ask you—and to some extent you have answered this but you may want to add more—is about the numbers and, indeed, the current rights and entitlements of wives and children, dependents, both in Nepal and in the UK in respect of the present situation. Mr Sherchan and Mr Sharma, would you like to talk about the situation of dependents, the wives and children of Gurkhas who are caught in this present situation?

Q42 Chairman: How many wives and children do you estimate are affected?

Mr Sherchan: Around 200, the retired Gurkhas, have applied and are rejected. The rest of it, I do not think so. What have you got? The 46 or 50, or whatever number, may not want to come here.

Q43 Chairman: If you take Mr Heaver's figure, it is not more than 200,000. Is that right? Is that what you are saying?

Mr Howe: Chairman, can I comment on that as well?

Q44 Chairman: Yes—only if you give us the figures.

Mr Howe: I think those figures, with the greatest of respect, are hugely inflated. The Home Office, in answering questions about numbers of applicants during the course of the proceedings, told us that between 2004 and 2007, that is after the right to apply came in, there were 3,714 applications for settlement by retired Gurkhas. That included those Gurkhas who retired post-1997. The Gurkha Brigade is losing approximately 230 men a year—they are being replaced. If we look at that number,

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then we can say that roughly 2,000 of those 3,714 applicants were men who are in under the new policy, under the immigration rule. The number of old veteran Gurkhas that applied is small. It is in the region of 1,300.

Q45 Chairman: Can I hang on to that figure, because it is a very precise figure.

Mr Howe: It is.

Q46 Chairman: 3,714 is a very precise figure.

Mr Howe: It is.

Q47 Chairman: How many dependents do you think we are talking about, if those were the applicants. About 12,000?

Mr Howe: I would think that the number is likely to be 10,000 or less.

Q48 Chairman: The total figure, we are talking about.

Mr Howe: The total figure, including dependents.

Q49 Chairman: So this figure of 200,000—

Mr Howe: I think is hugely inflated.

Q50 Chairman: —is way out of the ball park.

Mr Howe: Yes.

Q51 Chairman: Mr Heaver, you are nodding but that is the figure you gave me.

Mr Heaver: They are the figures that are being put forward by the Ministry of Defence and Home Office, presumably.

Q52 Chairman: Are we agreed? Are we talking about 10,000 or do we have something more than this?

Mr Heaver: The figures coming from the Ministry of Defence are hugely inflated. As to those who are likely to wish to come here, I would entirely agree with Mr Howe's figures on that.

Q53 Chairman: We are talking about a number of 10,000, including dependents. Is that right?

Mr Heaver: I think that is probably right.

Mr Howe: The thought, as of October 2006, that there was a cut off for these veteran men to apply was very real. People were travelling literally 12 days to make their applications. There is not a whole bundle of people—

Q54 Chairman: It is a pretty accurate figure because they knew that was the end game.

Mr Howe: Yes.

Q55 Chairman: Right, so we can strike 200,000 from the record.

Mr Howe: 200,000 is fanciful.

Chairman: Could I move on to Gwyn Prosser, then.

Q56 Gwyn Prosser: Mr Howe, as you know, in 2004 the new rules allowed for individual applications for settlement if particular criteria were met. One of the key criteria was established, strong ties within the

UK, which was something of an arbitrary sort of value. How do you think we could set a benchmark to make the system fairer?

Mr Howe: The test really was “strong reasons why settlement is appropriate”. I would say service in the Armed Forces, service anywhere, is an appropriate link with this country. I would ask you to look at what the Home Secretary was apparently prepared to allow back in 2004, and that was four years' service, as applies to post-1997 Gurkhas and as applies to all other foreign soldiers within the Army. But if you are going to keep a discretionary policy in respect of pre-1997 Gurkhas, then it needs to widen the benchmark tests that are there. For example, the length and quality of service does need to be taken into account. VC Pun is over here. He is a man who served for 18 years, who won the Victoria Cross, our highest gallantry award. There are only nine surviving Victoria Cross winners in the world. He applied in October 2006 to come to this country and he was refused. We do not take into account valour and gallantry awards. If we do not take into account length of service, if we do not take into account involvement in conflicts, if we do not take into account wounds and injuries, then we are letting these men down.

Q57 David Davies: I think everyone in this room would agree with that, but are we allowed under the Human Rights Act to give preference to somebody who has won a Victoria Cross or a medal for gallantry? I think we should, but are we allowed to under the Human Rights Act? I suspect we are not. You are a lawyer. I suspect that that would be challenged.

Mr Howe: It is disingenuous to suggest that I am saying only Victoria Cross winners.

Q58 David Davies: I support what you are saying. I think people like this man here who have won a Victoria Cross or shown gallantry for distinguished service should be given priority. But I also believe that under the Human Rights Act that would not be acceptable. I think it is wrong, but I do not think we would be legally allowed to discriminate in favour of people who have shown gallantry. You, Sir, as a lawyer, ought to be able to give an opinion on that.

Mr Howe: I will give an opinion. I think it is a relevant factor that ought to be taken into account.

Q59 David Davies: It ought to be, but can it be?

Mr Howe: I think it can be. Blake J, when handing down his judgment on 30 September, made it very plain that for those who have won gallantry awards that is a relevant factor and a matter that can be taken into account. It is not exclusive and the only factor that can be taken into account, but it must be thrown into the mix. It makes common sense.

Q60 Gwyn Prosser: I wonder if I could first make a personal remark, not on behalf of the Committee. I think most of us are wholly supportive of improving the lot of Gurkhas and giving them the rights to which we think they are entitled, but my own

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personal view, Mr Howe, is that you are in danger of over-egging and overplaying the whole issue of valour and gallantry, important as they are. I think everyone in the country is very well versed on that and I think we have to look at more practical issues within the Human Rights boundary, as Mr Davies commented. That is a personal remark. My question is to do with the 1997 cut-off date. Do you disagree with that per se or do you think it too arbitrarily set and should be on a different date?

Mr Howe: The so-called rationale for the date is that it is the date on which Hong Kong was handed back to the Chinese and the headquarters of the Brigade of Gurkhas moved finally from Hong Kong to the UK. The rationale was that, therefore, the ties with the UK became stronger after that date. I would say that service for the country, no matter where and no matter when is what counts. Whereas the 1997 date may be a relevant date in respect of other types of matters—and I have in mind the pension issue here and there have been quite clear, bright lines drawn on that by the courts—I do not think it is relevant to what we are talking about. We are talking about a moral debt of honour and gratitude.

Q61 Mr Winnick: Mr Howe and Mr Heaver, reference has already been made by Mr Salter to the Home Office note we have which tells us that the judgment of 30 September has been accepted by the Home Office and urgent work is being undertaken to produce revised guidelines. However, in the same note it says, “Any new proposal that resulted in the removal of the 1 July 1997 cut-off”—and we come back now to figures—“would have to consider the wide-ranging social and financial impacts of granting settlement to up to 40,000 former Gurkhas and their dependents, not least on the housing sector.” The Home Office note goes on to say, “The majority of the Gurkha inflow would be over the age of 60 and have difficulty in finding work and would have implications for the Government’s position on pension provision for former Gurkhas.” That is going to be, if you like, the Home Office position. What would be your reaction to that?

Mr Howe: Really what I said earlier. This is simply not borne out by the evidence. The numbers that have applied are—

Q62 Mr Winnick: They plucked it out of the air, do you think?

Mr Howe: They have taken a potential pool, multiplied it by three, added two to it and come up with a figure. The hard evidence is how many of this group of veterans have applied. It is in the region of 1,300 to 1,400.

Q63 Mr Winnick: The Home Office would say, theoretically—unless you dispute the figure given—up to 40,000 and their dependents.

Mr Howe: Do we think the whole ageing population of Nepal is about to uproot, come over here and look for work? I think that is, again, just nonsensical. We should look at the real numbers and the reasons for

them coming. There may be reasons of health that people will come, but there are no reasons without connections.

Q64 Mr Winnick: I happen to agree with you, Mr Howe. It is the Home Office that uses this as an argument.

Mr Howe: I find it scaremongering.

Q65 Mr Winnick: What do you say to the Home Office view that really this is just a means of trying to get over the immigration rules and regulations and it is undesirable?

Mr Heaver: The whole problem was there were no immigration rules and regulations that dealt with any members of the Armed Forces prior to October/November 2004. To suggest that Gurkhas are trying to circumvent the rules is therefore just a complete misunderstanding of the situation. There were no rules to circumvent. There was a concession that was applied for Commonwealth and foreign soldiers in the forces that was not applied to Gurkhas. Had there been settlement permitted for Gurkhas on the same basis as was allowed for the foreign and Commonwealth soldiers, there would not be a problem, there would not be a situation to circumvent.

Q66 Mr Winnick: Is it your view that sometimes governments take on causes or cases which they cannot possibly win because of public opinion?

Mr Howe: In 2004 the Home Office was acting in a very honourable way, in my view, and I think the Home Secretary was ready to allow all Gurkhas, irrespective of the date of retirement, to settle in the country if they had served for four years. The evidence I have seen showed that the MOD then put information into the Home Office that there were oppositions to that from the government in Nepal. The MOD was essentially saying there ought to be the 1997 date because the government of Nepal did not want Gurkhas to be discharged back in Nepal. That proved to be unfounded.

Chairman: Thank you.

Q67 Mrs Dean: Turning back to pension rights, a question for Mr Sharma and Mr Sherchan. The pension settlement for Gurkhas was initially set in line with pension rights for the Gurkha regiments in the Indian Army. Do you consider it fair for British Gurkhas to receive different terms and conditions to Indian Gurkhas?

Mr Sherchan: The British Gurkhas are to receive the pension in what it is at the moment. Is that what you said?

Q68 Chairman: There is a difference between the pension of a person serving in India and in the UK. Mrs Dean would like to know if you think that is fair, that there should be that difference?

Mr Sherchan: No, it is not fair.

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Q69 Chairman: Thank you. Mr Sharma?

Mr Sharma: The service was within the British Army as Gurkhas, so, as the service of the Gurkhas within the British Army is recognised as a superb service, the pension should definitely be different to Indian Gurkhas and equal to the home soldiers here.

Chairman: We have a split in the campaign.

Q70 Mrs Dean: Are you saying that if they retire over here the pensions should be higher?

Mr Sharma: Regardless to where they retire, regardless to prior to 1 July 1997, regardless to when they joined, where they joined or where they served or retired, the pensions should be equal. In terms of pay, pension and other amenities, they should be equal, as far as I know and I realise.

Q71 Mrs Dean: They should be equal but higher than the Indian Gurkhas pension.

Mr Sharma: Well, definitely it has to be higher, because that is their part of the world. They served there. They served that country. Their pension should be determined by that government, not the British Government.

Q72 Martin Salter: Chief Superintendent Hurley, I read in *The Observer* that you are going to be telling us why the Gurkhas would make great recruits to the British Police Force. I would like to give you an opportunity to do that and briefly give us an indication of your view of the Gurkhas, based on your service with them.

Mr Hurley: Chairman, if I may very briefly, before I address that question, clarify a fact that has been lost amongst all this. Up until 2002, Gurkhas were able to apply for passports, were they to know that they could have done so. Within British immigration regulations, providing a person who was doing Crown service got the sponsorship of their commanding officer, they could apply for a passport. Indeed, the first Gurkha did it through that route because I sponsored him along that route. Subsequent to that, a large number of Gurkhas applied for passports. Once the Ministry of Defence Brigade of Gurkhas became aware, they then interceded with the Home Office Immigration Department to prevent other Gurkhas getting their passports. Turning to your question about why Gurkhas may or may not make good police officers: it is not the policy of the Metropolitan Police or any other force specifically to recruit from any ethnic group; however, the fact is that because Gurkhas possess many of the qualities that make good police officers—they are loyal, they are intelligent, they are highly motivated, many of them speak several different languages from the Indian subcontinent and, of course, they visibly diversify the workforce—they would be welcome as police officers. Indeed, the first Gurkha to get a British passport has now completed four years' service with a UK police force.

Q73 Martin Salter: I want to move on to ask about the treatment of Gurkhas in comparison with other foreign and Commonwealth soldiers who served in

the British Army. It is my understanding that from anywhere else in the world, and the Fiji Islands is a place where the MOD recruit quite aggressively, which is a pretty poor country, the settlement rights are that after four years' service in the British Army they have an automatic right of settlement to this country and, presumably, also enjoy the same pension rights as a regular British Army soldier. Is that the case? If it is, do you think it is fair?

Mr Hurley: It is the case. Indeed, for Gurkhas post-1997 they enjoy a similar right. But really the issue here is of those Gurkhas who served before 1997 who would like the opportunity to come here. I think the key thing, to take up the point, is that, although we have heard of up to 40,000, perhaps the reality of it is that most of these people are very old men who are most unlikely now to leave their families and homes, so we are talking small numbers.

Q74 Martin Salter: To put it bluntly, the argument that because Nepal is a poor country and the wages are much lower and, therefore, the Gurkhas should receive a lesser pension and lesser terms and conditions, is completely inconsistent with the British Army recruiting from somewhere like Fiji where wages are also much lower.

Mr Hurley: Yes, you are absolutely right. Those Fijians who were recruited, shall we say, before 1997, have received full British Army pensions.

Q75 Martin Salter: Lastly, Blake J in his judgment said in relation to the situation in the Falkland Islands that he found it inconsistent—I would use stronger words—that the Government found that the Falkland Islanders had a tie with Britain which entitled them to settlement rights but the people who went over there and gave their lives and shed blood in order to protect their freedom were denied those rights. What is your reaction to that? Do you share Blake J's criticism of the current policy?

Mr Hurley: I suspect it is probably the same reaction as virtually everyone on this Committee. It is not right and it is not fair.

Q76 Bob Russell: Much of my line of questioning has already been exhausted in previous interventions, so you will be pleased to know that I am somewhat limited. You are obviously aware of my oral question to the Immigration Minister on the floor of the House on 14 July 2008. Would you agree with me that we received a welcoming answer from Liam Byrne?

Mr Howe: Would you be able to remind me.

Chairman: Mr Russell, because you do ask many questions to Mr Byrne, would you like to refresh the witness's memory roughly of what was said.

Q77 Bob Russell: This was on 14 July when I asked about leave to remain for former Gurkha soldiers who left the British Army before 1997. His answer was the usual standard answer, so I followed up with a supplementary urging the Government to do pre-1997 what they had done post-1997—and let us give credit to the Government for at least what they did

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post-1997. Mr Byrne's answer, in summary, left me with the impression that those who applied would be treated very sympathetically. Indeed, in the statement the Home Secretary issued after the High Court judgment on 30 September, she said—and this again gives further comfort—"I have always been clear that where there is a compelling case, soldiers and their families should be considered for settlement. We will honour our commitment to the Gurkhas by reviewing all cases by the end of the year." Are you satisfied that the Home Office will review all cases by the end of the year?

Mr Howe: I hope so. I cannot say any more than that. They should do.

Q78 Chairman: There is about six weeks left.

Mr Howe: They must be working on it already. I hope so.

Q79 Bob Russell: Allied to that, you are obviously aware of the 10 minute rule bill I introduced to the House. I am hoping that in due course this Committee could persuade the Prime Minister to include the sentiments of that, along with the High Court hearing judgment, in the next Queen's Speech. To finalise, how many of the people who would gain settlement rights under your proposals are currently (a) living in Nepal and (b) living in the UK?

Mr Howe: The 2001 census showed that there were just under 6,000 Nepalese people living in the UK. There are estimates that that number is now up around 50,000. Of those in Nepal, who wish to take up the rights, I come back to the answer I have given a number of times: the applicants have been in the region of 1,300 and there are probably up to 10,000 in total—

Q80 Bob Russell: The bulk of those we are talking about are already in the UK and we need to regularise their situation?

Mr Howe: There are some who have applied. I do not know what the number is for that, but there are some. That does need to be regularised.

Q81 Chairman: The 3,714 you mentioned so precisely, Mr Howe, are they here already?

Mr Howe: The post-1997 applicants will be here, the 2,000, but the balance are still in Nepal because their applications were refused.

Q82 Mr Clappison: You have told us about the situation on pensions, are you able to assist the Committee with a figure for the cost of the pension changes which you have been talking about?

Mr Howe: I have not said there are going to be pension changes. I think the Committee needs to draw a bright line between the settlement case on one side and what may become a pension matter. It is not before you now.

Q83 Mr Clappison: One of the things we have not heard about yet is a right to compensation. I think it may help the Committee and everybody if I say that the right to compensation for serving categories of

Gurkhas you are asking for is a special arrangement for compensation or lump-sum one-time pension to all World War II Victoria Cross holders and other widows.

Mr Howe: I have not said that.

Q84 Mr Clappison: This is issue 3 of the Gurkha campaign. Who would be the right person to ask about this?

Mr Heaver: I do not think any of us. I am certainly not aware of any compensation claim. I would like to make it absolutely clear the courts have ruled on the pension issue. The courts have held that the current pension regime is lawful. We are not here today to talk Gurkha pensions and we are certainly not here today to give estimates or guesstimates as to what a Gurkha pension may or indeed may not cost. I am not aware of any compensation claim for Gurkhas. The compensation Gurkhas seek is probably simply the right to come and work in this country, and create their own compensation by their own labours.

Mr Clappison: We will look into that more. I was just detailing the service which they had given, which was some considerable service to this country, for which they had not been compensated, and in some cases they have been made redundant arbitrarily. But we will take better particulars on that.

Q85 Martin Salter: I would just like to turn to an argument that the MOD regularly trot out, which is as similarly ludicrous as are some of their other arguments, that there would be a massive effect on the Nepalese economy if we were to open up settlement rights to 10,000, 15,000 ex-Gurkhas. I understand, Mr Heaver, that up to five million Nepalese workers work abroad and remit money back into Nepal. That is quite common practice for underdeveloped countries: Bangladesh, India, Pakistan, wherever. From that, it would seem to me that the claim of the MOD that the Nepalese economy would somehow be negatively affected by a number of Gurkhas seeking settlement rights in this country is pretty ludicrous in the context of five million people working abroad. Presumably, also, people working in this country would continue to remit back into Nepal, therefore boosting the living standards and the economy of Nepal.

Mr Heaver: None of the statistics and figures put forward by the Ministry of Defence and the Home Office bears close scrutiny. There are millions, as you have said, of Nepalese working outside Nepal and remitting money back to Nepal. The latest figures I have seen of the size of the Nepalese economy is that it is US \$1.95 billion.

Q86 Chairman: So it will not have any effect if we grant this leave: the Nepalese economy will still survive.

Mr Heaver: It will survive. And, of that US \$1.95 billion, US \$1 billion is remittances from overseas.

Q87 Chairman: Do you think that will continue, even though they are allowed settlement here?

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Mr Heaver: On the maximum figures that are being talked about—which are disputed—we are talking maybe 200,00 but almost certainly very many fewer than that.

Q88 Chairman: We are not talking 200,000.

Mr Heaver: No. How can remittances or removals of capital from Nepal by such a few people have any devastating effect on anything?

Q89 Martin Salter: The MOD also question whether or not, if settlements rights were granted, the Nepalese government would allow the continued recruitment of the Gurkhas—a legitimate question if the numbers were large. We would be interested in your views on that contention.

Mr Heaver: If we look at the Indian Army, they still recruit one-third of their Gurkha soldiers in Nepal. It is a large number—many times that recruited into the British Army. The Maoist government in Nepal has made an ideological commitment to ending Gurkha recruitment but they are realists about it:

they know that if they are to end recruitment they have to replace those jobs with comparably paid jobs. That is not going to happen in my lifetime or the lifetime of anyone here, I suspect. They have pragmatically said that they will retain an ideological commitment but they are not going to do anything about it.

Chairman: Luckily the Select Committee has no influence of the Maoist government.

Martin Salter: Sadly, I would say.

Chairman: Gentlemen, you have given evidence for over an hour. All of us on this Committee, irrespective of what happens in terms of our report, want to pay tribute to the work you have done. Would you pass on our thanks to Ms Lumley, who was unable to come today, for her letter. The Committee is now going to deliberate, as soon as the room is cleared, on a letter that we will send to the Home Secretary following this evidence session. Mr Salter, what time is the meeting this afternoon?

Martin Salter: It is at 3.30 in Committee Room 11.

Chairman: Thank you very much.

Written evidence

Memorandum submitted by the Home Office

1. This note provides an update on the Government's position on Gurkhas, in particular with regard to the rights of former Gurkhas to settle in United Kingdom.

2. Foreign and Commonwealth nationals make up around 10,000 or 10% of the British Army, of whom 3,500 serve within the Brigade of Gurkhas. Gurkhas retain their Nepalese nationality throughout their period of service with the Brigade, in accordance with the terms of the Tri-Partite Agreement reached in 1947 between the Governments Nepal, the UK and India. Substantial improvements have been made by the Home Office and the MoD since 1997 on pay, pensions and settlement rights for serving and retired Gurkhas.

3. In October 2004, the Immigration Rules were changed so that Gurkhas based in the UK from July 1997 onwards have been able to apply for settlement here. Former Gurkhas with a minimum of four years service who were discharged on or after the 1 July 1997, when the Brigade completed its move from Hong Kong to the UK, can apply for settlement. Those who were discharged before 1997 have been treated on a discretionary basis. So far, over 6,000 former Gurkhas have been granted the right to live in the UK permanently under these arrangements, with almost all of those discharged since 2004 opting for settlement here.

4. The fairness and lawfulness of historic and current settlement policy towards former Gurkhas was the subject of a recent judicial review heard in the High Court on 16–17 September. In his judgment (*Limbu & Others v Secretary of State for the Home Department and Others*), Mr Justice Blake confirmed that the July 1997 cut-off date is fair and not discriminatory.

5. The Court did however rule that the guidance applicable to Gurkhas discharged before July 1997 was unlawful because it was irrational, insufficiently clear and did not cover the weighting that would be given to factors such as length and quality of service. The judge indicated in particular that he did not think the guidance matched up to the statements made by Ministers in announcing it.

6. This judgment has been accepted and urgent work is being undertaken to produce revised guidance. This guidance will be published and all cases will be reviewed by the end of the year.

7. The 1 July 1997 cut-off date in the immigration rules and upheld by the Court is not an arbitrary date. It is the point when the Brigade of Gurkhas became UK-based following the withdrawal from Hong Kong. Under the Immigration Rules and as a matter of immigration policy in general, the granting of permission to stay permanently is normally linked to an extended period of residence in the UK or to the presence of close family here. Prior to July 1997, the Brigade of Gurkhas was Far East-based and they benefited from specific terms and pension arrangements with the expectation that they would retire to Nepal.

8. The Government would not accept the suggestion that it has neglected retired or serving Gurkhas, or that it has not honoured its commitment to them. Since 1997, Gurkhas have received the same pay and conditions as others in the wider British Army. There are up to 45,000 retired Gurkhas who have largely settled outside the UK (in Nepal): 26,500 are receiving their MoD pensions and a further 10,500 receive a welfare pension from the Gurkha Welfare Trust. There was never any suggestion that the opportunity to settle permanently in the UK would be offered to every former member of the Brigade of Gurkhas and their dependants and this was not the basis on which Gurkhas signed up for a career with the Brigade. Gurkha terms and conditions did mean that those completing the standard maximum engagement of 15 years service were rewarded with a pension for life, normally while still in their mid-thirties. The Gurkha Pension has been maintained by the MoD at a level equivalent to a decent salary in Nepal.

9. The pension arrangements for former Gurkhas have also been subject to a recent challenge in the High Court in the case of *Gurung, Purja & Shreshtha v The Secretary of State for Defence*. In Mr Justice Ouseley's judgment delivered on 2nd July, the Government's application of the July 1997 cut-off date to pension enhancements for service in the Gurkhas was found to be reasonable, rational and lawful because only after 1 July 1997, when the Brigade completed its move from Hong Kong to the UK, was there any expectation that Gurkhas would retire in the UK.

10. Any new proposal that resulted in the removal of the 1 July 1997 cut-off would have to consider the wide-reaching social and financial impacts of granting settlement to up to 40,000 former Gurkhas and their dependants, not least on the housing sector. The majority of the Gurkha inflow would be over the age of 60 and have difficulty in finding work. Such a concession would also be likely to have serious implications for the Government's position on pension provision for former Gurkhas.

11. On 3 July, in reply to a PQ about the cost of extending pension provision for service in the Gurkhas before July 1997, Derek Twigg explained that the MoD's 2007 offer to revalue service after 1 July 1997 at equivalent main British Army rates was £150 million. Revaluing pre-July 1997 service of those still serving and those retired since July 1997 would cost a further £170 million. Whilst the cost of being obliged to backdate all Gurkha pensions for service in the Brigade between 1948 and July 1997 would run into "many hundreds of millions". The DWP has estimated that there could be a further potential liability in terms of expenditure on NI retirement pension in the order of £100 million per year initially.

30 October 2008

Memorandum submitted by the British Gurkha Welfare Society (BGWS)

Following our meeting today and as directed we forward our points which should be included when considering the review for Gurkha settlement.

The unique British/Gurkha relationship which dates back to 1817 is envied by many nations and perhaps misunderstood by some. The strength has never faltered and the binding factor could be the adventurism and loyalty in both.

Never were we treated equally in pay, pension, quartering, married accompanied tour (one two to three year tour over a 15 year period of service) and entitlements. To add insult to injury, those serving in the British Army from the Foreign and Commonwealth countries were granted settlement rights with a minimum of four years service. Our minimum of fifteen years counted for nothing.

With the unstable political situation in Nepal and the escalating Maoists activities many ex Gurkhas arrived in the UK prior to 1 July 1997 seeking asylum. Unfortunately those caught by the immigration services were deported: there was no official help coming from anywhere. To help the ex Gurkha community in UK the British Gurkha Welfare Society (BGWS) was established. BGWS then staunchly and openly led the Gurkha campaign from 2003. We remain indebted to the British Public for the sincere support given to the Gurkha campaign ever since. We also acknowledge the Home Office goodwill in ceasing all deportation immediately following our meeting in Liverpool on 3 September 2004. The campaign supported by the British Public, unanimously by members of all the political parties and the media, compelled the Government to grant citizenship rights to Gurkhas in recognition for their service to the Crown. However, the policy announcement debarred those discharged prior to 1 July 1997 the automatic right extended to those discharged after this date. Their cases were looked at on an individual basis.

The arbitrary date 1 July 1997 date unrealistically claims that prior to this the Brigade of Gurkhas was an overseas based establishment, conveniently ignoring our involvement in the Malaya confrontation, Borneo emergency, Falklands, Cyprus emergency and the first Gulf War. The first time a Gurkha battalion was stationed with families was at Tidworth in 1962, when they were pulled out to reinforce the British Forces in the Borneo emergency. Then since 1970 there has always been a Gurkha Battalion in the UK, added to later by Demonstration Companies in Brecon and the Royal Military Academy Sandhurst. Disregarding these facts the crucial issue here is service to the Crown.

We have desperately attempted to abolish the arbitrary date of 1 July 1997, hand in hand with the other ex Gurkha organisations, GAESO, UBGEAN and NESA. There are over 2,000 cases pending an appeal hearing, which led to a few lead cases being granted Judicial Review and kudos to Howe and Co whose strength of approach to the case convinced the case Judge to counsel the Home Office to review its policy. Meanwhile Joanne Lumley remains the main force behind this crucial step and continues to champion this cause and call for justice.

The important, sensitive and burning issue of inequality in pension remains alive. We have tried all amicable avenues to the extent of handing in petitions to the Prime Minister, with a copy of supporting documents, a copy of which was also handed to each and every Member of Parliament including the House of Lords. The package includes a proposed pension deal in line with the rest of the British Armed Forces, while compensating in areas to make it sensible to the Treasury. Having received no alternative, we have requested a Judicial Review through our solicitors Russel Jones and Walker. A date for this hearing remains pending.

Settlement alone is not the solution; it should be granted in recognition to their service to the Crown. But in reality equal pension is the only solution to the whole Gurkha issue. The 2003 Judicial Review on the Gurkha pension scheme which viewed it fair based purely on the economy of Nepal and not equal service has disillusioned many in believing that residing in UK is the only option to receive equal pension. More so as all serving Gurkhas effective from 2006 are entitled to the full British pay and pension. This also gives rise to disparity and recognition of service and rank earned prior to 1997 in that a Major the highest rank ceiling for a Gurkha from this bracket will receive lesser pension than a Corporal of the 2006 onward batch.

Even before a final decision on the Gurkha settlement has been made by the Home Office, following the Judicial Review there is a general misconception in Nepal all pre 1997 will be granted settlement including dependants irrespective of their age and personal status. As per immigration policy there are set criteria for all dependants over the age of 18. While we would certainly welcome the inclusion of all but if this is incorrect the Home Office should be directed to widely explain the status quo of dependants to be eligible to join parents. Not to do so would be a costly financial penalty on those applying led by these misconception.

We have fought and continue to do so for the Crown in every battle and now today in Iraq and Afghanistan where the five Military Crosses many commendations won and sadly the death of the second Gurkha Rfn Yubraj Rai killed in action on 4 November 2008 in Afghanistan stands testimony to our commitment. We remain with Britain through thick and thin and pray Britain will remain with us now in our dire hour of need.

November 2008

Memorandum submitted by Joanna Lumley

I am very sorry that I shall not be able to attend the Home Affairs Select Committee hearing on the Gurkhas. You have kindly invited me to offer a few sentences to be considered on Tuesday, which now follow.

The situation under debate seems to demand a two-fold response. The first is this; is it right to bar soldiers who have served our country for many years from the right to settle here simply because their country of origin is not within the Commonwealth: in effect, treating them as mercenaries. I believe that over the 200 years that they have served with the British Armed Forces, displaying gallantry and self-sacrifice at the highest level, that they have earned the right to be treated as least as fairly as their Commonwealth counterparts.

I understand money has always been deducted from the Gurkhas' wages at source, presumably as taxes, and yet the Home Secretary expressed concern to me that old soldiers would come over here to use the National Health Service. I believe that these veterans have earned the right many times over to be cured and nurtured by the country they have protected for so long, as have their children the right to be educated here if they so choose.

The government insists on compelling reasons for pre 1997 retirees to be allowed to settle here, citing residential or family ties. Gurkhas have been barred from living here by a succession of governments, making "family ties" a ludicrous and insulting requirement to these most devoted adherents to family values. As their tour of duty in Britain almost never extends beyond two years, it is similarly insulting of the government to offer the chance to apply to Settle only to those who must have served for three years on these shores.

The complicated reasons and requirements retired Gurkhas must meet seem to have been made especially difficult to comply with, like a Catch 22 situation, devised with a strange kind of small-mindedness and in meanness of spirit. I write this at a time when the 2012 Olympics are in preparation, and much is being made of the budget of £9 billion for two weeks entertainment being a fair, if rather startling, price to pay for putting our country in a good light on the world's stage. This brings me to my second part; the honour of Great Britain.

Overwhelmingly, the majority of the letters the Gurkha Justice Group and I have received express the deepest shame and anger at the way we treat retired Gurkhas. The most commonly-held opinions are that we owe the Gurkhas everything they may need, out of gratitude for their solidarity and sacrifice: that the Gurkhas should immediately be put at the head of the queue of people entering this country, even before our newer friends in the expanding European Union: that people are ashamed of our indifference to the plight of these retired soldiers, and to ex-servicemen in general; and that our country's honour is in tatters.

All these letters recommend a complete re-write of the rules applying to Gurkhas; to do so would remove the feeling of shame and self-loathing that these existing laws provoke in the people of the UK. To be candid, people are disgusted with our country's attitude to our most loyal allies and faithful friends.

I would submit that the fairest thing the Home Secretary could do is to remove the 1997 cut-off date and amend the Immigration Rule, so that the position of post-1997 Gurkhas is applied to pre-1997 Gurkhas: which is that 4 years' service in the Armed Forces is sufficient, of itself, to allow a Gurkha to settle in the UK with his family.

Money is not the question here: this country's behaviour to her truest friends is on trial. Without honour there is not much else worth having.

Thank you so much, Mr Vaz: I await the outcome of your deliberations with the keenest interest.

21 November 2008

Correspondence from the Chairman of the Committee to The Home Secretary

The Home Affairs Committee took evidence in a one-off hearing today, Tuesday 4 November, on the rights of Gurkhas to settlement in the UK. We heard compelling testimony from two ex-Gurkha soldiers and from long-standing Gurkha campaigners.

As a result of the evidence we heard today, the Committee has asked me to write to you with the following conclusions, and ask that you take urgent action in response.

1. The Committee considers that the UK owes an historic debt of gratitude to the Gurkhas for their brave, loyal and distinguished service in the defence of this country.
2. The Committee agrees that the current Government policy of distinguishing between those Gurkhas who retired prior to 1 July 1997—the date on which the base of the Brigade of Gurkhas transferred from Hong Kong to the UK—and those who retired after, has in effect created two classes of Gurkhas. It has also caused considerable personal suffering and hardship.
3. The Committee further concludes that this treatment of the Gurkhas is particularly unfair given the discrepancy with settlement rights afforded to other Commonwealth citizens who serve in our Armed Forces.
4. The Committee therefore urges you to take urgent action, in conjunction with the Ministry of Defence, to redress the currently unfair situation by extending settlement rights in the UK to all former Gurkhas.

4 November 2008

Further correspondence from the Chairman of the Committee to The Home Secretary

I wrote to you on 4 November and again on 2 February with regard to evidence taken by the Committee on the rights of Gurkhas to settlement in the UK. The Committee's conclusions were:

1. The Committee considers that the UK owes an historic debt of gratitude to the Gurkhas for their brave, loyal and distinguished service in the defence of this country.
2. The Committee agrees that the current Government policy of distinguishing between those Gurkhas who retired prior to 1 July 1997—the date on which the base of the Brigade of Gurkhas transferred from Hong Kong to the UK—and those who retired after, has in effect created two classes of Gurkhas. It has also caused considerable personal suffering and hardship.
3. The Committee further concludes that this treatment of the Gurkhas is particularly unfair given the discrepancy with settlement rights afforded to other Commonwealth citizens who serve in our Armed Forces.
4. The Committee therefore urges you to take urgent action, in conjunction with the Ministry of Defence, to redress the currently unfair situation by extending settlement rights in the UK to all former Gurkhas.

Despite the fact that almost six months has passed since our first letter, we have not yet received a response to these recommendations. I should be grateful for an immediate response.

21 April 2009

Correspondence from the Minister of State for Borders and Immigration to the Chairman of the Committee

Thank you for your letter dated 21 April 2009 to the Home Secretary regarding the Committee's conclusions on the rights of Gurkhas to settle in the UK. The Home Secretary has asked me to respond on her behalf.

I am pleased to be able to inform you that we have today announced the publication of the Government's revised policy for considering applications for settlement from former members of the Brigade of Gurkhas, by way of a Written Ministerial Statement in the House of Commons.

In 2004, the right to settle in the United Kingdom was given to Gurkhas who had been discharged from the British Army on or after 1 July 1997. This was the date of the handover of Hong Kong from Britain to China and the point at which the Brigade of Gurkhas moved their headquarters from Hong Kong to the United Kingdom.

In September 2008 the High Court agreed that the Government's recognition of the change in location of the regiment's base in its approach to settlement rights for Gurkhas was appropriate. However, they judged that the guidance used by caseworkers when making decisions on those discharged before 1997 needed to be much clearer in setting out the factors which were to be given weight in assessing which individuals should be offered settlement in the UK.

The guidance has now been revised and is available on the UK Border Agency website. In considering changes to the guidance, we have taken on board not only the letter of what the judge said in this case but also the spirit of his judgment. The new guidance will ensure that those who have given outstanding service will be entitled to settle in the UK. In summary, under the terms of the guidance, Gurkhas and their families will be able to come to the UK to settle where they meet one of the following criteria:

- three years' continuous lawful residence in the UK during or after service; Close family settled in the UK with whom they enjoy family life within the meaning of Article 8 of the European Convention on Human Rights (ECHR);
- a Level 1-3 Award for gallantry, leadership or bravery for service in the Brigade;
- 20 or more years' service in the Brigade; or
- a chronic/long term medical condition which is attributable to, or was aggravated by, service in the Brigade.

Additionally, discretion will normally be exercised and settlement in the UK granted if two or more of the following criteria are met:

- claimants were previously awarded a UK Ministry of Defence disability pension but no longer have a chronic/long term medical condition attributable to, or aggravated by, service in the Brigade;
- claimants received a Mention in Despatches (Level 4 Award) for service in the Brigade; and
- claimants completed 10 years service in the Brigade or served less than 10 years but received a campaign medal for active service in the Brigade.

We estimate that this guidance will mean that over 4,000 ex-Gurkhas and around 6,000 spouses and children will qualify for settlement rights in the UK. We will be proud to welcome those individuals to the UK in recognition of the outstanding service that they gave. We will work with the Ministry of Defence to ensure that those who might be eligible in Nepal are fully aware of these changes and of the opportunity for settlement.

Turning specifically to the conclusions of the Committee outlined in your letter:

1. The Government both recognises and honours the huge contribution that the Brigade of Gurkhas has made, and continues to make, to the Armed Forces. This contribution is chiefly recognised through the arrangements made to support Gurkhas following their discharge. Gurkhas complete their service at the age of 33 and from that time and for the rest of their life they receive a pension which allows for a very good standard of living in Nepal.

2. The Courts agreed that the 1997 cut-off date for Gurkhas to receive automatic settlement in the UK was sound. Until 1997 the Brigade of Gurkhas was based in Hong Kong. Under the Immigration Rules and as a matter of immigration policy more generally, the granting of permission to stay permanently is normally linked to an extended period living in the UK or the presence of close family here.

3. The Court found that the circumstances of Far-East based Gurkhas were not analogous with those of Commonwealth citizens serving in HM Force pre-July 1997. I do not believe that the Gurkhas have been treated unfairly.

4. We have not been required by the Courts, nor given any suggestion that the right to settle permanently in the UK would be offered to every former member of the Brigade of Gurkhas. I believe that the new policy is fair.

In line with our commitment to the Courts we will now reconsider all outstanding appeals by 11 June 2009.

24 April 2009