EXPLANATORY MEMORANDUM TO

THE ARMED FORCES (ALIENS) REGULATIONS 2009

SI 2009 No. 835

1. This explanatory memorandum has been prepared by the Ministry of Defence and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 These Regulations provide an exception to the bar in section 340(1) of the Armed Forces Act 2006 on aliens serving in the regular forces or any of Her Majesty's forces raised in a British overseas territory.

2.2 Citizens or nationals of Nepal who serve in the Brigade of Gurkhas of the British army are excluded from the general prohibition in section 340(1) of the Act. In addition, for the first time, after five years of service in the Brigade of Gurkhas these Regulations allow such persons to serve in other units of the regular forces or the forces of a British overseas territory.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative context

4.1 Section 340(1) of the Armed Forces Act 2006 provides that no alien may be a member of the regular forces or any of Her Majesty's forces raised in a British overseas territory. However, section 340(2) provides that the Defence Council may make regulations that provide exceptions to this general prohibition.

4.2 Under the British Nationality Act 1981, an alien is a person who is neither a commonwealth citizen nor a British Protected Person nor a citizen of the Republic of Ireland. Citizens of all other countries are therefore aliens: this includes citizens of countries in the EU, (except the Republic of Ireland, Cyprus & Malta[1]); citizens of all NATO countries (except Canada[2]); and citizens of Nepal.

5. Territorial extent and application

5.1 This instrument extends to the United Kingdom, the Isle of Man and British Overseas Territories.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

[1] Cyprus and Malta are the only EU countries that are also members of the Commonwealth
[2] Canada is the only NATO country which is also a member of the Commonwealth

7. Policy background

7.1 The first policy objective is to ensure that, notwithstanding the general prohibition on aliens serving in the regular forces and forces of British overseas territories, citizens or nationals of Nepal should be allowed to continue to serve in the Brigade of Gurkhas of the British army.

7.2 The second objective is that the Gurkhas' Terms and Conditions of Service be brought into line with the terms and conditions of service of UK citizens in the regular forces so that citizens or nationals of Nepal having served for five years in the Brigade of Gurkhas are no longer barred from transferring to the regular forces or a force of a British overseas territory. This was achieved when the Gurkhas' terms and conditions of service were incorporated into the terms and conditions of service for UK citizens in the regular forces which were brought into force in 2007. Interim measures have been applied to operate them, until these Regulations comes into effect.

8. Consultation outcome

8.1 A memorandum about consultation on the Armed Forces Act 2006 primary legislation was submitted in written evidence to the Select Committee on the Armed Forces Bill and published on 9 May 2006 in its Special Report of Session 2005-06 (HC 828-II, page Ev 136). This memorandum explained how stakeholder consultation had been carried out and listed the individuals and organisations consulted. The individual instruments under the 2006 Act have been the subject of rigorous consultation with relevant stakeholders (such as the Services, the Service police, the Judge Advocate General and the Military Court Service) over a period of many months, to ensure that the policy goals have been achieved and that the provisions of each instrument will work in practice.

9. Guidance

9.1 A new Manual of Service Law will provide guidance and supplementary information to Armed Forces personnel on the single system of Service law established under the Armed Forces Act 2006. The first volume of three within the Manual, which is intended for commanding officers and those who administer the Service justice system, includes a chapter on terms and conditions of enlistment and service. The Manual of Service Law will be available in time to allow Service personnel to be trained ahead of full implementation of the 2006 Act. Guidance will be promulgated to judge advocates through the Judge Advocate General's practice memoranda.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies.

10.2 There is no impact on the public sector.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The Armed Forces Act 2006 is subject to quinquennial review. Following full implementation of the Act in Oct 2009 the provisions will be monitored and reviewed leading up to the first quinquennial review in 2011.

13. Contact

13.1 Mr N Shaw at the Ministry of Defence, 0207 218 0564, email nick.shaw460@mod.uk can answer any queries regarding the instrument.