Aim

1. The purpose of this Information Sheet is to highlight important information that Foreign and Commonwealth (F&C) and Gurkha Service Personnel (SP), and personnel with non-European Economic Area (EEA) family members need to know in order to effectively plan and prepare for their futures as civilians. This information sheet outlines the immigration process for F&C and Gurkha Service Leavers (SLs) and provides references and links where more detailed information can be found.

Introduction

2. As a British or F&C citizen or Gurkha serving in HM Armed Forces who may have non-EEA family members, you are unlikely to have regularised your immigration status. This becomes a very important issue as you become a Service Leaver (SL) and subsequently as a civilian because if applications are not made at the correct time you may not be able to engage with the key agencies that you might need immediately after your discharge. It is your personal responsibility to understand the immigration and nationality policy and processes that will affect you and your family members. This is key as Service careers can be cut short for many different reasons so early planning and making some financial provision may make this difficult time a little easier and less stressful. Being clear about your likely intention to settle in the UK or return to your place of birth is the first step. Understanding what it is like to live in the UK is important. Job opportunities, house prices and the cost of living varies considerably by region across the UK. This should be considered and monitored throughout your military career. To assist your planning and decision making, regional information is available on the Transition to Civilian Life web page at Transition to Civilian Life. Quarterly Transition Newsletters, Information Sheets and Transition Fairs are available to all SP. This information needs to be considered very carefully as it may influence where you decide to settle in the UK. Getting this important decision right requires early planning and should not be left to the last moment. Not taking account of your (and your families) specific needs may result in your transition to civilian life and naturalisation becoming more difficult than it should be. Settling in the area of your last unit may appear convenient but might not provide the best opportunities and potential for you and your family in the long-term, so it is worth taking the time and effort to plan for your future as a civilian. Settling in an area of high unemployment or where there is a surplus of skills that you might have may make finding suitable employment quickly quite difficult. Should you decide that you and your family wish to settle in the UK you need to make an application for UK entry visas, or change or regularise your immigration status at about the same time that you will be making your final plans to transition into civilian life. This can be stressful and complex and will require your full attention if you are to achieve the outcome you seek. If you are assigned overseas and you have a notification for discharge and wish to settle in the UK, you should apply to be back in the UK in good time to start the settlement application process and transition to civilian life. It is important that you engage regularly with your parent or sponsor unit in order that you receive the necessary administrative support remembering that naturalisation and settlement are very much a personal responsibility.
Armed Forces Covenant

3. SLs should be aware of the Armed Forces Covenant. It is designed to ensure that SP and Veterans are not disadvantaged by serving or having served in HM Forces. More information on the Armed Forces Covenant can be found at Armed Forces Covenant. The Armed Forces Covenant does not give SP or veterans priority over others unless there is a clear and assessed need. SLs should be aware that in general the scale and level of need in civilian society is high and the services and support available is limited by central and local government funding. It should therefore not automatically be assumed that all SLs’ aspirations will be met by Local Authorities. It should be understood that a long and honourable military career or operational experience does not afford any personal advantage or priority over others in need.

Immigration Status Whilst Serving

4. As a serving member of HM Armed Forces you are exempt UK immigration control under Section 8(4) (a) of the Immigration Act 1971; this exempt status is not extended to non-EEA family members of Service personnel. Your HM Armed Forces exemption overrides any existing UK visa conditions you had prior to your enlistment in the forces. Your exemption from UK immigration control remains in place for the period of your service and it ceases immediately when you are discharged. Foreign or Commonwealth citizens serving in HM Armed Forces cannot be granted settlement whilst they are exempt UK immigration control. As a Commonwealth serving citizen you can apply for UK citizenship whilst serving. As a Nepali serving citizen you cannot apply for UK citizenship whilst serving in the Brigade of Gurkhas (but you can if you have officially and permanently transferred into the wider British Army).

Immigration Status on Discharge

5. Your exempt UK immigration control will end immediately on the date of your discharge and you will then be subject to UK immigration control measures. This means that you should have considered your future well in advance of discharge so you know whether you (and your family) will be taking positive action to regularise your immigration status which may allow you to remain in the UK, or make plans to return to your own (or other) country. Both options are expensive, particularly for those with families, so this requires planning and making the necessary financial provision. It is your responsibility to present your passport to your unit on an agreed date to ensure that your unit can write “ceased” and your discharge date in your passport over the exempt UK immigration control endorsement. Your unit will also notify the Home Office of your discharge date and the Home Office will cancel your exempt UK immigration control status. If you are serving overseas when notified for discharge and you intend to settle in the UK, you are advised to apply to be assigned back to the UK well in advance of your discharge date so you can meet the timeline on immigration applications to ensure you receive settlement on or soon after discharge.

Immigration Status after Discharge

6. When you are discharged and your exempt UK immigration control has been cancelled you must ensure that you have permission to stay in the UK by regularising your immigration status. The Home Office will normally write to you and give you 28 days’ notice to regularise your immigration status or you are obliged to leave the UK. If for some reason the HM Armed Forces exempt immigration control stamp is not cancelled in your passport by your unit when you are discharged, this does not mean you are still exempt from immigration control. If you have been discharged and do not have an alternative immigration status then you do not have permission to work in the UK. After 28 days if you have not left the UK the Home Office may record you as “overstaying” and this could adversely affect any future immigration or naturalisation application you make. In short, if, for whatever reason, you have not been granted in writing 28 days’ notice to regularise your immigration status by the time of your discharge it is your responsibility to rectify the situation. Do not make the mistake of ignoring your responsibilities regarding your immigration status or believe that ‘the system’ will look after them and act on their behalf.

Settlement Support for Service Personnel

7. Before you apply for settlement you are advised to read Home Office HM Forces: Guidance Applications on Discharge and the Home Office Immigration Rules Appendix AF. If you require additional support you should raise your concerns to your Unit Support Staff immediately. If you need to seek legal advice you can contact The Office of the Immigration Services Commissioner to find qualified legal advice in your area.
Immigration Advice for Units

8. When a SP raises concerns about their immigration status to the Unit Support Staff which cannot be resolved, the unit should seek further advice through their Regional Chain of Command or from Army Headquarters DPS(A) PS4(A) Community Support or the Army Families Federation Foreign and Commonwealth Specialist. Units should not give SP legal or immigration advice, but they must support the Service person by understanding and if required, managing the issue and signposting the Service Person to the appropriate support agency.

Choose not to Apply for Settlement on Discharge

9. If you choose not to regularise your immigration status after discharge, you must leave the UK. You have 2 years after your discharge date to apply for Indefinite Leave to Enter; this application must be made from outside the UK on form VAF AF. When you subsequently arrive in the UK on your Indefinite Leave to Enter visa you will, from that point on, have settlement in the UK.

Application for Settlement on Discharge with 4 or more Years’ Service

10. If you are in the UK, you can apply for settlement (Indefinite Leave to Remain) if you’re being discharged after completing 4 or more years’ service on form SET (AF). You can apply for settlement up to 10 weeks before your discharge date. This will give the Home Office sufficient time to process your application and grant settlement on or just after your discharge date. If you do not apply at the 10 week point before discharge you may not be granted settlement on your discharge date and you will not be entitled to work, claim benefits or get local authority assistance until your application has been successfully processed. Once the Home Office receive, check and assess a settlement application, they may issue an indicative letter; this is not a guarantee of settlement but is an indication that your application is likely to be successful. This letter will assist you in making arrangements for future employment, housing, healthcare and benefits as part of your transition to civilian life. The grant of Indefinite Leave to Remain will only happen after your discharge if you have applied in good time and meet all the Home Office settlement rules.

Application for Settlement on Discharge with less than 4 Years’ Service

11. You may be able to apply for Indefinite Leave to Remain on form SET (AF), if you have completed less than 4 years’ service and you are discharged on medical grounds for an injury that is attributable to service and sustained whilst deployed in an operational theatre. If you have less than 4 years’ service and you are being discharged on medical grounds which are attributable to the Service but not sustained in an operational theatre, you may be able to apply for Indefinite Leave to Remain as above, or Further Leave to Remain using form FLR AF; in this instance you are advised to seek guidance or legal advice - see Settlement Support for Service Person – paragraph 7. The Home Office will consider less than 4 years’ service applications on a case by case basis and you should submit supporting medical or other relevant evidence with your application. You should also include any medical evidence you wish to rely on in your application together with any details of any compensation awarded under the Armed Forces Compensation Scheme.

Discharge on Medical Grounds Including a Requirement for On-going Support

12. If you are being discharged on medical grounds and you have a requirement for on-going support (including support from family that reside outside the UK) your Unit Support Officer should refer you to the MOD Veterans Welfare Service, Veterans UK, using the VWS Form1 - see Tri-Service Welfare Protocol. Referrals should be made approximately 3 months prior to your discharge date or immediately once a discharge is decided. In some cases there may be a clear need for an earlier referral by your unit and intervention by the Veterans Welfare Service in which case the reasons should be justified by the referring authority. For further advice on Command and Care of Wounded Injured and Sick Personnel see AGAI Vol 3 Chapter 99.

Family Immigration Status and Settlement on Discharge

13. On discharge, your accompanying spouse and children can also apply for settlement at the same time if they have been on a route to settlement for 60 months. Children who are 18 or over must apply in their own right, or you are being discharged indefinite leave to enter/remain, or you have become a British Citizen. If your family are applying from overseas and you are settled, then you must be in the UK. The full eligibility including English Language and Financial requirements are in Home Office Immigration Rules Appendix AF. In some cases the settlement application process for family members can fall between the old and new rules (immigration rules were amended on 1 Dec 13). If you have any doubts you must raise the issue to your Unit Support Staff. Your unit may then seek further advice from Army Headquarters DPS (A) PS4A Community Support or the Army Families Federation Foreign and Commonwealth Specialist. If you need to seek legal advice you can contact The Office of the Immigration Services Commissioner to find qualified legal advice in your area.
Citizenship for Foreign and Commonwealth (FC) & Gurkha Service Personnel

14. As a Foreign or Commonwealth citizen you are not required to hold British citizenship whilst serving in HM Armed Forces and applying for citizenship is your personal choice. Before you apply for British citizenship you must consider the implications of holding dual citizenship as your country’s nationality legislation may not allow or place restrictions on dual citizenship. The most common means by which British citizenship is acquired is by a process called naturalization. An application for citizenship can take 6 months to process (longer if further checks are required). You are therefore advised not to apply for citizenship with less than 8 months service left before your discharge date. If you do and you are waiting for the Home Office decision after your discharge, you will have no entitlement to work, benefits or local authority assistance. Before applying for citizenship you should read Guide AN and Booklet AN13. Gurkha Service Personnel cannot apply for citizenship whilst they serve in the Brigade of Gurkhas, but if granted settlement on discharge they can then apply for citizenship by personal choice.

Criteria: Application for naturalisation as a British Citizen

15. As a Commonwealth serving citizen you can apply for citizenship if you have been legally resident in the UK and/or serving in HM Forces for 5 years, were resident in the UK on the first day of the qualifying period (this is waived if you were outside the UK on a military assignment at that time), and you are of good character (see 2013DIN01-130 The Effect of Service Discipline Offences on Citizenship and the Guidance Notes Home Office HM Force Criminality14). You must also meet the Government Knowledge of Language14 and Life in the UK14 requirements - see Knowledge of Language and Life in the UK. The in-service literacy levels 1&2 Functional Skills (English) qualification are not currently accepted for the language rules. You can apply for citizenship whilst you are in-service on Form AN. For Gurkha Service Personnel, please refer to para 14 above noting that application for citizenship can only be made having already obtained settlement on discharge.

Citizenship for Spouse in the UK

16. There are two routes for your spouse to become a British citizen. In both cases your spouse needs to meet the Knowledge of Language and Life requirement14 and other requirements as laid down in the Guide AN and Booklet AN. A spouse applying in their own right must have been legally residing in the UK for 5 years, have been in the UK on the start date entered on the application and have held Indefinite Leave to Remain for 12 months. A spouse of British Service Personnel (including a Foreign or Commonwealth person who has naturalised) must be have been legally resident for 3 years in the UK, have been in the UK on the start date of application and hold Indefinite Leave to Remain on the date of application. Applications are made on Form AN. All applications for children need to be made using Form MN15. Children are not naturalised, they are registered as British citizens but the requirements are predominately the same.

Settlement or Citizenship Refusal

17. If your application is refused the Home Officers will inform you in writing as to the reason why you have been refused, and whether you can appeal the decision and how long they will allow you to remain in the UK. You should seek qualified legal advice as soon as possible as you may only have a short period such as 28 days to make any appeal action. See Settlement Support for Service Person (paragraph 7) or Gov.UK find an immigration adviser18.

Costs of Settlement or Citizenship Application

18. The costs for visa, Settlement or Citizenship applications can be considerable and the charges are published every April for the coming year, see the Visa Charges 2015/16. If you decide to make an application you must enclose the full fee for each applicant as the charges are made on a per person basis. The charges are paid by you and there is no provision in MOD policy for you to recover the costs of settlement or citizenship.

Housing

19. Individual housing options and general information about securing accommodation as a civilian is provided by the Joint Services Housing Advice Office (JSHAO). This information is vital in planning and making provision for civilian accommodation and is available at JSHAO Home16. Housing briefs can also be delivered by regional brigade transition staff at the request of units. SLs should be aware that veterans have no automatic right to social housing or have any priority over other civilians. There is inadequate social housing across the UK with the demand exceeding the available supply. This means that housing is allocated based on the assessed need which in civilian society is extremely high. Therefore unless a SL and their family have significant issues which cannot be overcome, they should assume for planning purposes that they will need to secure their own private accommodation. The military accommodation policy is contained in JSP 46422 Tri-Service Accommodation Regulations (TSARS) and the eligibility rules and conditions for applying, occupying, giving notice to vacate and vacating your SFA is the same for all Service Personnel. If you have applied for settlement for you and your family in good time, the Home Office may issue you an Indicative Letter; this is not a guarantee of settlement but is an indication your application is likely to be successful.
Some general information on housing is available in Transition Newsletter 7. If your housing options are limited or your need for support is great, you can present this letter to the local authority as part of your housing application. If the local authority does not recognise the Indicative Letter you are to raise the issue to your Unit Support Staff as soon as possible for further action or if you have left the service you can raise the issue direct to UKVI on helpline: 0300 1232241 or visit UK Visa Overview.

Immigration Process Schematic
20. A schematic of the immigration process is attached below for your information.

Conclusion
21. For F&C and Gurkha soldiers and their families, the decisions regarding their transition to civilian life are more complex as they include choosing the country they wish to settle in. The stresses and anxieties experienced when approaching the end of a military careers can be quite challenging. However, this discomfort and uncertainty can be significantly reduced by fully understanding one's options, collecting as much information as possible and planning early. This will assist SLs so they are better prepared to make important decisions that will enable a smooth transition into civilian life. Key to success is the need for individual SLs to acknowledge the personal responsibility they have for planning and executing their transition into civilian life. It is now out dated and misguided to believe that planning your own personal development and long-term future whilst in service is selfish, disloyal, inappropriate and indicates a lack of commitment. Failure to plan and prepare for your long-term future is irresponsible, short-sighted and an abrogation of personal responsibility. In future your chain of command will be monitoring and assessing your long-term planning, preparation and progress.

22. You may have the opportunity to apply to Naturalise (Citizenship) whilst in service. This is a personal choice and is done at personal expense and can take up to 6 months to process. It is wise not to leave this choice until the end of a military career. Settlement can only be applied for once a discharge date is known but your personal considerations and decision should not be delayed or avoided until the very end of your military career because applications can take up to 10 weeks to process and can be expensive so need to be budgeted for. Migration policies and procedures need to be understood and taken into account when considering Transition to Civilian Life planning. This should be done early and continuously throughout your military career.