

# ARMED FORCES (FLEXIBLE WORKING) BILL [HL]

## Policy and Scope

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### Introduction

1. One of the most evident changes in society, and by extension the Armed Forces, is the desire for individuals to have greater choice in how they run their lives. The current employment framework of the Armed Forces does not reflect modern employment practices and does not meet fully the aspirations of our people for flexible employment. Currently, for example, some Regular personnel who are unable to meet their unlimited military commitments for periods of time leave the Services and we lose their valuable knowledge skills and experience. This impacts on operational capability and increases Defence costs. We want to ensure we continue to attract and retain the best men and women for our Armed Forces. We believe that providing for temporary periods of flexibility during a person's career would better reflect modern lifestyles and aspirations.
2. The new policy will build on existing flexible working opportunities within the Services (for example, late starts and early finishes, compressed hours, working from home), to provide more extensive opportunities for Service personnel to vary their service. This will lead to more balanced lifestyles with opportunities for Service personnel to serve in a way that better suits their personal aspirations and family circumstances. It will help to ensure that the Services are more representative of the people that they serve and have more choice in the way they live and work. This will be crucial in retaining and attracting key skills and in diversifying the makeup of the Armed Forces. Future flexible working opportunities derive from the Flexible Engagements System Project that is part of the Armed Forces People Programme. We expect to be able to implement flexible working by April 2019.

### **Why is legislation needed?**

3. It is proposed that the Bill will introduce legislation that will allow Service personnel to provide their service in a more flexible way that better suits their lifestyles. Service personnel will be able to temporarily reduce the time they work by “dialling down” to new levels of commitment (for example setting aside one or two days per week where they will not work or be liable for work) and/or to restrict the amount of time they spend separated from their normal place of work.
  
4. The Bill will amend the Armed Forces Act 2006 (AFA 06), to enable flexible working through part-time service and limited geographic employment within the Regular Armed Forces. In practice, these new options will be temporary, limited to defined periods, and subject to Service needs to maintain operational capability. Approval of the legislation will enable Defence to make a number of changes to the Armed Forces terms and conditions of Service to enable new part-time working arrangements to be created; to enable personnel to restrict the amount of time they are separated from their usual place of duty and work residence and to provide members of the Armed Forces with the right to apply to serve under the new flexible working arrangements. The new measures will create a formal obligation for the Services to consider and decide on applications from personnel to serve under the new flexible working arrangements and to create the requirement for the Services to record the terms of an approved application

### **What are the main proposals?**

5. The existing Defence Council regulations made under s.329 AFA 06 provide for the terms and conditions of enlistment and service for persons enlisting, or those who have enlisted (that does not include officers who are commissioned). The regulations do not provide a comprehensive list of all the terms and conditions of service. Rather, they provide, for example, for the types of engagement a Regular may be enlisted to serve on, the duration of those engagement types, the ability to extend them, etc. Service personnel also have various rights to

leave, either by or under statute (such as the Working Time Regulations 1998) or MoD policy on, for example, maternity leave, annual leave, etc.

6. It is envisaged that the new measures which will be necessary to implement the amendments made in this Bill will cover:
  - the right of an enlisted Regular to apply in writing to his Service for a period of part-time working and/or limited separation (subject to some restrictions to ensure that operational capability is maintained).
  - the consideration of such an application by a 'competent Service authority' and the effect of an approval – the arrangements agreed; the term of the authorisation; and the ability of Defence to vary, suspend or terminate the arrangement in prescribed circumstances, e.g. national emergency or some form of manning crisis.
  - the ability of the Service to refuse applications on the ground of 'Defence need'.
  - a right of appeal against a refused application to a 'higher authority' within Defence.

### **How will this this work in practice?**

7. This is a major change in the way Regulars currently serve. At present, there is an obligation for Regulars to be available for duty all day, every day. This will fundamentally change under the new arrangements, when personnel will be allowed to have specified periods of time when they are simply not required for duty (and cannot be lawfully ordered to attend) or liable for overseas deployment. The new options will be temporary, limited to defined periods, and subject to Service needs to maintain operational capability. Once a person has passed a specific qualifying period, they can apply to take advantage of the new flexible working opportunities. There will be no limit to the number of times someone can apply; and there is no rank restriction on who can apply. Applications will be considered by an approvals board, at headquarters level. A higher level body will

consider appeals. Once an application has been approved, personnel will remain subject to Service law at all times and the Service will retain the right to recall personnel on new flexible working arrangements in exceptional circumstances such as during a national emergency.

**a) Operational Capability** - The need for our Armed Forces to maintain operational capability is paramount. This has been a key part of our thinking in designing the new flexible working opportunities, and it will remain an important factor when the MoD considers applications from Service personnel to work more flexibly in the future. It is also recognised that personnel who have dedicated themselves to public service sometimes struggle to meet their full military commitment the only option in such circumstances has been to leave the Armed Forces, representing a loss to the individual (career and service) and a loss to the Armed Forces (skills and experience). To deliver operational capability, the Armed Forces must be seen as a modern and attractive employer if it is to recruit the quality and quantity of people it needs from across the breadth of the UK society that it serves. This is getting harder to do against an increasingly competitive market and the competition for talent is expected to increase in the years ahead. Flexible working opportunities will enhance the delivery of operational capability through improved retention, a more diverse workforce, and a broader spectrum of commitment levels across both Regular personnel and Reserves, when and where we need them.

**b) Pay** - In future, when personnel take advantage of these flexible working opportunities and reduce their levels of commitment, they will see a proportional reduction in their pay. The main aim of the policy change is to ensure fairness so that when Regular Service personnel choose to temporarily reduce the amount of time they work, they will receive a proportionally appropriate amount of pay and their non-contributory pension will be similarly adjusted.

The calculation of pay for Service personnel working under the new part-time arrangements will be based on the amount of time they serve in proportion to a full time equivalent. For example, a Service person who chose to reduce

their commitment from 100% to 60% of a full time equivalent would see a 40% reduction in their salary.

**c) Pensions** - Changes to the different Armed Forces pension schemes will be made using the guiding principle that Service Personnel on flexible working arrangements should suffer no advantage or disadvantage, when compared to those remaining on regular full time service. A Regular who dials down their commitment will see their pension pot for that period proportionately reduced and a commensurate change in their entitlement to pension benefits that is fair and appropriate.

Once primary legislation has been approved, we will also need to make further detailed changes largely to pension schemes rules and regulations through secondary legislation.

**d) Allowances** - The principle behind many allowances will not be affected by the new flexible working opportunities. If allowances remain unaffected, they will continue to be provided as normal as long as the Service person continues to meet the eligibility criteria.

**e) Accommodation** - Service personnel who are currently entitled to subsidised accommodation will continue to remain entitled, in recognition of the fact the Service personnel working under the new flexible arrangements will still retain a mobility liability.

**f) Refusal of an application** - An application is likely to be refused if personnel are at a high state of readiness to deploy to an operational theatre, or if the loss of their capability cannot be absorbed at unit level such as when serving on a ship, or in a high readiness role.