

ARMED FORCES (FLEXIBLE WORKING) BILL
SECONDARY LEGISLATION POLICY STATEMENT

Introduction to the measure.

1. Evidence from Armed Forces surveys tells us that at times some Armed Forces personnel struggle to balance their service commitments and their personal lives and that offering additional flexibilities to those already available to them may prevent some from leaving the Armed Forces. The Strategic Defence and Security Review 2015¹ included a commitment to “make the changes necessary to enable our Armed Forces to work flexibly, reflecting the realities of modern life”. Accordingly, in response to this and following consultation with Service personnel, the Ministry of Defence is planning to introduce new flexible working opportunities for the Armed Forces from April 2019.

2. The principal aims of the new opportunities we are introducing are to: (a) deliver a modern and more flexible engagement system for members of the Armed Forces by providing attractive opportunities for Service personnel to vary their commitment level, within the needs of the Service, in order to improve recruitment, retention, and diversity; (b) utilise the opportunity of allowing personnel to reduce their commitment to improve the ability of the Services to meet Defence outputs with the most cost effective mix of its personnel; and (c) enable Defence to better utilise the knowledge, skills and experience of a broader range of personnel, both Regulars and Reserves.

3. In practice, this will be delivered by: (a) enabling Regular personnel to apply to temporarily limit their Service commitments, including part-time working and limits to separation from their home base as a retention incentive, (b) reducing barriers to those seeking to transfer from the Regulars to the Reserves and vice versa, and (c) improving opportunities for Reserves to commit more to make more effective use of all their knowledge, skills and experience.

Who is likely to be affected?

4. Regular members of the Armed Forces who through new flexible working opportunities, “dial down” to reduce their levels of commitment, or restrict their absence from their normal place of duty.

¹ Available at <https://www.gov.uk/government/publications/national-security-strategy-and-strategic-defence-and-security-review-2015>.

What the Bill does and the secondary legislation needed to implement flexible working arrangements

5. Clause 1 of the Bill makes amendments to section 329 of the Armed Forces Act 2006 (“AFA 06”) and clause 2 makes consequential amendments to sections 9, 9A and 23 of the Juries Act 1974 (“JA 74”) and Group C of Part 3 of Schedule 1 to the Law Reform (Miscellaneous Provisions) (Scotland) Act 1980 (“LR(S) 80”).

6. The amendments to AFA 06 extend the existing regulation-making powers in section 329 so as to enable the Defence Council (the highest level of military command and administration under Her Majesty) to make provision about part-time working for members of the Regular Armed Forces; and for Regular Service to be capable of being geographically restricted.

7. The consequential amendments to JA 74 are necessary to ensure that once Regulars move on to part-time service they will continue to benefit from the provisions allowing for automatic excusal and deferral from jury service (the legislation currently refers to “full-time” service). Similar changes are also needed to the equivalent Scottish legislation in LR(S) 80.

8. These provisions are needed to deliver new flexible working opportunities for members of the Regular Armed Forces to enable Regulars to move temporarily on to part-time working arrangements and limit their degree of separation from their home base for a time (to prevent them being deployed due to a change in their personal circumstances during that period of time). The aim is to develop a modern, more flexible working offer by providing attractive opportunities for Service personnel to vary their commitment levels for period(s) during their career, within the needs of the Service, in order to improve recruitment, retention and diversity.

9. This is a major change in the way Regulars currently serve. At present, there is a liability 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 separation from their home base.

10. The existing Defence Council regulations made under section 329 AFA 06 provide for some of the terms and conditions of enlistment and service for Regular persons enlisting, or those who have enlisted (that does not include officers who are commissioned).² 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

² See: Army Terms of Service Regulations 2007 (SI 2007/3382), Royal Air Force Terms of Service Regulations 2007 (SI 2007/650), Royal Navy Terms of Service (Ratings) Regulations 2006 (SI 2006/2918), and Royal Marines Terms of Service Regulations 2006 (SI 2006/2917).

engagement types, the ability to extend them, etc. Many other important matters related to Regular service are provided for in “Queen’s Regulations” for each Service.

11. It is envisaged that the new Defence Council regulations which will be necessary to implement the amendments made in this Bill will cover:

- a. the right of an enlisted Regular to apply for part-time working and/or limited separation (subject to some restrictions to prevent an applicant from making a fresh application whilst an existing one is still being considered);
- b. 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;
- c. the maximum number of occasions a person can be required to serve without a geographic restriction;³
- d. a right of appeal against a refused application to a ‘higher authority’ (within Defence)..⁴

Further changes to secondary legislation which will be necessary to implement the new arrangements

12. The changes described in paragraphs five to eleven above are necessary, but not sufficient to introduce the new flexible working reforms for Regulars. In addition, the MOD will need to make some other amendments to enable the full implementation of the new flexible working arrangements. We have so far identified a number of other Statutory Instruments (SIs) which we believe will need to be amended. These cover Armed Forces pensions, redundancy, compensation and other conditions of service. It is necessary to ensure that when a Regular moves on to part-time Service for a period of their career, commensurate adjustments are made to, for example, their pension entitlements so that they are not either disadvantaged or advantaged by this period of Service. All of the SIs that we are proposing to amend are subject to the negative procedure, and we intend to make all of the necessary changes in time to implement new flexible working arrangements in

³ We currently estimate that number will be no more than 35 occasions/days per year.

⁴ Regulars will also be able to raise a service complaint, under the statutory service complaints system in Part 14A AFA 06, if they consider that they have been “wronged in relation to their service” due to any aspect of this process, including decisions taken. This system is overseen by the independent Service Complaints Ombudsman who can investigate alleged maladministration in the handling of complaints and also the merits of the complaint itself and make findings and recommendations to the Service to remedy any wrongs.

April 2019. A number of “Prerogative Instruments” and other regulations, for example Queen’s Regulations for each Service, (which are not subject to any Parliamentary procedure although some are laid before Parliament) may also require amendment to reflect the new flexible working arrangements.

Summary of Statutory Instruments

13. A summary of the changes which may be needed is set out below with a list of the SIs we expect to amend.

- Armed Forces pension schemes. Changes to the regulations to ensure personnel do not experience either unfair advantage or disadvantage in the calculation of benefits, including: qualifying Service; pensionable pay; and resettlement grants.
- Armed Forces early departure payment schemes. To mirror the changes made to pension schemes; and to ensure that personnel do not experience either unfair advantage or disadvantage in the calculation of benefits.
- Armed Forces Redundancy Schemes. To mirror the changes made to pension schemes; and to ensure that personnel do not experience either unfair advantage or disadvantage in the calculation of benefits.
- The Armed Forces Compensation Scheme. To enable Regulars on reduced hours to be treated the same as those on a full commitment, who are injured during Service. This is for the purposes of Guaranteed Income Payment calculations.
- Armed Forces Resettlement scheme. To ensure that personnel do not experience either unfair advantage or disadvantage in the calculation of benefits.

List of SIs

<u>The Army Terms of Service Regulations 2007</u>	SI 2007/3382
<u>The Royal Air Force Terms of Service Regulations 2007</u>	SI 2007/650
<u>The Royal Navy Terms of Service (Ratings) Regulations 2006</u>	SI 2006/2918
<u>The Royal Marines Terms of Service Regulations 2006</u>	SI 2006/2917

<u>The Armed Forces Pension Regulations 2014</u>	SI 2014/2336
<u>The Armed Forces Pension Scheme Order 2005</u>	SI 2005/438
<u>The Armed Forces (Enhanced Learning Credits Scheme and Further and Higher Education Commitments Scheme) Order 2012.</u>	SI 2012/1796
<u>The Armed Forces Early Departure Payments Scheme Order 2005</u>	SI 2005/437
<u>The Armed Forces Early Departure Payments Scheme Regulations 2014</u>	SI 2014/2328
<u>The Armed Forces (Redundancy, Resettlement and Gratuity Earnings Schemes) (No 2) Order 2010</u>	SI 2010/832
<u>The Armed Forces Redundancy Scheme Order 2006</u>	SI 2006/55
<u>The Armed Forces and Reserve Forces (Compensation Scheme) Order 2011</u>	SI 2011/517
<u>The Armed Forces (Redundancy, Resettlement and Gratuity Earnings Schemes) (No2) Order 2010</u>	SI 2010/832