

Armed Forces (Flexible Working) Bill

Administration

Applications

1. Service personnel will be able to apply to take up the new flexible working opportunities at any point in their career once they have completed their basic and professional training, plus an additional period prescribed by their Service. Therefore we expect that it will be around four years before a new entrant will normally be permitted to undertake part-time working. Service personnel will have the right to apply for part-time working or geographical restriction, but approval will be subject to Service needs and therefore they would not have the right to work under the new flexible working arrangements.

2. All applications will be given fair consideration on a case by case basis and will receive a formal response either agreeing to approve flexible working or providing clear grounds as to why an application cannot be approved. Service personnel will be encouraged initially to approach their chain of command to discuss their needs and the practicability of flexible working in relation to their current role and how such an arrangement might best be managed. Personnel will then need to make a formal application, which we expect to be submitted electronically using the Joint Personnel Administration system (JPA). The chain of command would be expected to make a recommendation on an application before it is considered by the prescribed Approval Authority in the relevant single Service Headquarters.

3. The Approval Authority will take into account the chain of command's recommendation, overall manning levels of the Service and the individual's trade, and any specific skills held by the Service person. The Approval Authority will consult the career manager, branch or trade sponsor and manpower planners, and other specialists to determine how the request could be met or whether the reduced availability of an individual would adversely affect the delivery of operational capability

during the period for which an application for flexible working has been made. The Approval Authority will also consider the likelihood that any relevant factors may change during that period, and whether the Service person has been warned or given notice for operations, sea service or high readiness service. Having considered these issues, the Approval Authority will make a decision to approve or reject the application.

4. Guidance for individuals and the chain of command on the opportunities and the controls on the new flexible working arrangements, as well as the application and administration process will be developed in due course to be available for when the new measures are planned to come into force in 2019. Commanding Officers and Service headquarters authorities will be required to consider requests to undertake flexible working in accordance with the guidance. Service personnel will have the opportunity to provide their reason for applying to work flexibly, but the overriding criteria for applications will be Service need and the maintenance of operational capability. In some cases an individual might instead make better use of alternative arrangements (such as compressed hours).

Appeals

5. Service personnel will also have the right to appeal against a decision to reject their application for part time working or geographical restriction and there will be a requirement for them to be made aware of this right when making an application. Appeals will be considered by an Appeals Authority, separate from the Approval Authority who first made the decision.

6. Commanding officers and the Approval Authority will be required to ensure that the correct procedure is applied for all applications in a consistent and fair manner. All approvals, refusals and amendments to agreements will be agreed in writing to avoid any uncertainty and to provide an audit trail.

7. Should someone remain unsatisfied by the outcome of an appeal, they will retain their right to make a complaint in accordance with the existing Service Complaints procedure, including access to the Service Complaints Ombudsman.

Limits

8. Flexible working agreements will reflect the Service person's requirements and the ability of the Service to manage any gap in capability created by approving a period of flexible working. To help manage the applications and expectations, we intend to limit these periods to no more than 3 years at any one time, or to the end of an assignment, whichever is sooner. Within these periods, where approved, we intend to enable people to reduce their liability to serve by up to 40%, such as two days in a five day working week of their regular full time service. Those Service personnel requesting limits to their routine unlimited liability for separation from their home base will still remain liable for a maximum of 35 days separation in any one year; this will enable them to continue to undertake essential courses or participate in smaller periods of exercises.

9. We also intend to restrict the total cumulative time that a Service person can serve on flexible working arrangements, in order to maintain the principle that Regular service is a full time and unlimited commitment, while also helping to share the opportunities for flexible working amongst the broadest range of personnel. Currently, we are planning for the total period of all types of flexible working to be limited to 4 years in a 12 year rolling period.

10. Any alteration or suspension of the arrangements would have to be agreed between the Service and the individual. In authorising an alteration or suspension, the Service would have to be satisfied that the original criteria considered when granting the period of flexible working remains extant in light of the request.

Recall and the ability to vary or end flexible working arrangements

11. Flexible working arrangements are being designed to afford people a good level of certainty in order to allow them to plan their lives. However, while striving to provide people with certainty on the flexible working arrangements, the importance of the role Service personnel perform means that there is a requirement to retain the

ability to recall personnel where it is essential. Defence will be able to recall Service personnel from part-time working by suspending or curtailing the arrangement by providing the individual with 90 days' notice, or immediate notice in cases of a National Emergency. Curtailment will be necessary when recall to full Service is essential up to or beyond the planned cessation of the flexible working arrangement, whereas a suspension will be more appropriate when it is foreseen that the individual might be able to return to their flexible working arrangement after an enforced period of full-commitment service. Personnel will also be able to end the arrangements by giving 90 days' notice to do so.

Recall by the Services

12. The Services will have the ability to curtail or suspend flexible working arrangements for the needs of Defence and to maintain operational capability.

13. In the case of a National emergency, a Service person will be subject to immediate recall to full duties. We envisage that this will be in accordance with the Civil Contingency Act 2004 which defines an emergency as, "*...an event or situation which threatens serious damage to human welfare in a place in the United Kingdom, an event or situation which threatens serious damage to the environment of a place in the United Kingdom, or war, or terrorism, which threatens serious damage to the security of the United Kingdom.*"

14. The Services may also recall individuals to full duties in cases where the Service identifies a "significant change in circumstances" to those which supported the original decision to approve flexible working. In such circumstances the Service will need to give the individual at least 90 days' notice. The Service would have to be satisfied that the original criteria considered when granting the period of flexible working had significantly and materially changed resulting, for example, in some form of manning crisis, severe manning constraints, or skills shortages. We continue to work with the Services to develop the full detail, but envisage that these would include changes to either the overall manning levels of the Service or the individual's trade, or to the numbers of personnel with a specific skill held by the service person in comparison to the requirement for these for the delivery of operational capability

across the period of flexible working. Where any of these have changed substantially, the Service may issue a 90 day notice to recall the Service person to full duties, either by suspending the flexible working arrangements for a defined period (to allow them to be adopted again later for the remainder of the period), or by cancelling the flexible working arrangement.

Variation by the individual.

15. Individual circumstances can also change. Service personnel will be able to curtail a flexible working arrangement before they reach the end of the agreed period to return to full duties. This will normally require an individual to give 90 days' notice to allow the chain of command a reasonable period to make arrangements for the individual to return to their previous terms of service, including time to adjust any supporting work agreements, such as job-share, tied to their role. Requests to end the flexible working arrangement early, with less than 90 days' notice, may be agreed by the chain of command in consultation with the career manager.

Pay

16. Those Service personnel who take up the new flexible working opportunities will see a proportionate reduction in their pay, reflective of their reduced commitment. That variation will be fair and reasonable, both to those who work flexibly and to those who do not. Personnel who remain working on a full-time commitment will not see a reduction in their basic pay, x-factor payment, and any other universal payments.

17. The calculation of pay for Service personnel working under the new flexible working arrangements will be proportional, based on the amount of time they serve and/or the level of separation from their home base in comparison to a full time equivalent. Where someone reduces their work by one fifth, their pay will be reduced by one fifth, or 20 percent. We envisage that initially we would offer part-time arrangements of up to 40% reduction, which would reflect the equivalent reductions of 2 days less per week on a typical five day working week pattern which would result in a 40% reduction in pay. Similarly, those who have applied to have limits placed on their levels of separation and had this protection approved should also see a fair and

proportional reduction in pay to reflect this. We intend to do this by a proportionate reduction in the 'X-Factor', which is an element of the Armed Forces' pay that reflects the differences between Service life and comparable civilian employment such as levels of separation, stress and danger. We are engaged with the Armed Forces Pay Review Body to help determine what a fair and appropriate reduction would be.

Pensions

18. Pensions are derived from pay and therefore Regular Service personnel who undertake these new flexible working arrangements that result in a temporary reduction in pay will also see a fair and appropriate impact on the value of their pension benefits. The Armed Forces pension schemes were not designed with part-time working in mind and there would be cases of unfair disadvantage, or in certain circumstances advantage for those in many of the schemes if changes are not made. For example, one of the scheme's pension calculation uses the best 365 consecutive day's pay in the last 3 years which could result in an artificially lowered pension as a result of a temporary period of flexible working. As a result, we will need to make changes to the rules and regulations for those schemes through secondary legislation to ensure that they remain fair for those who have periods of reduced pay as a result of flexible working arrangements. Where we do make changes, we will do so 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.

19. There are three different Armed Forces Pension Schemes (AFPS) - AFPS 75, AFPS 05 and AFPS 15 for Regular Service personnel. AFPS 75 (which closed to new entrants on 6th April 05) and AFPS 05 (which closed to new entrants on 1 April 2015) are legacy pension schemes. AFPS 15 was introduced on 1 April 2015 and is available to both Regular and Reserve Service personnel. For most Service personnel now serving, flexible working will be under the new AFPS 15 arrangements, although there will be retained/accrued rights for some.

Allowances

20. The principle behind many allowances will not be affected by the new flexible working opportunities. Therefore, as long as the Service person continues to meet the eligibility criteria, the allowance will be unaffected by a flexible working arrangement. For example, Service provided accommodation, which is provided because of the inherent mobility of Service life, will continue to be available for those taking up these new flexible working arrangements under the normal eligibility criteria because they will continue to remain liable for routine assignment changes. The same is true for those eligible for the Continuity and Education Allowance (which assists Service personnel to achieve stability of education for their children that would otherwise be denied in the maintained day school sector due to their mobility of their family as a consequence of consecutive assignments); however, it is envisaged that additional checks will be incorporated into the application process for any second or subsequent approved periods of a flexible working arrangement to ensure they continue to meet the strict mobility criteria.