



BRIEFING PAPER

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Armed Forces (Flexible Working) Bill 2017-19: Progress of the Bill

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Summary

The Bill will enable members of the regular armed forces to serve part-time or to restrict the amount of time they spend separated from their normal place of work. The new measures are due to come into effect in 2019.¹

The Armed Forces (Flexible Working) Bill 2017-19 (HC 118) will amend the Armed Forces Act 2006 to enable provision to be made through secondary legislation for flexible working arrangements for regular Service personnel.

The Bill completed its stages in the House of Lords on 25 October 2017 and had First Reading in the House of Commons on the same day. Second Reading was on Monday 30 October 2017. The Bill was considered in Public Bill Committee on 14 November 2017 and reported without amendment. The remaining stages will be held on 29 January 2018.

The case for flexible working, the Government argues, is principally about recruitment and retention and is not a money-saving exercise.²

The Ministry of Defence is overhauling the 'offer' it makes to armed forces personnel, to make Service life more 'family-friendly', to increase the proportion of women serving, and to aid retention of personnel. Personnel can already access flexible arrangements such as compressed hours and working from home. But they cannot currently reduce their hours or reduce their liability for an extended overseas deployment.

The new arrangements will enable regular personnel to apply to reduce their hours or to limit the amount of time they are away from their home base for a set number of days per year. The MOD anticipates this will primarily assist those who have caring responsibilities, for example pre-school children or disabled, sick or elderly relatives. Approval will be subject to Service needs and will not be automatic.

The Bill was amended at Report Stage in the Lords to make any regulations made under the new provisions to be subject to the affirmative procedure. The Bill originally envisaged the use of the negative procedure for the regulations but the Government accepted an Opposition amendment. Members of the Lords also discussed at length the use of the term 'part-time' in the Bill with a number of former Chiefs of Defence Staff and other senior officers expressing their dislike of the term. In particular, they were concerned about the potentially detrimental use of the term a 'part-time' army could have on the reputation of the armed forces among allies and enemies, and the potential impact on deployability. An amendment to change the phrase in the Bill was defeated on Report in the Lords.

All bill documents can be found on the bill page on Parliament's website: [Armed Forces \(Flexible Working\) Bill](#)

The Ministry of Defence has publishing supporting documents on the Armed Forces (Flexible Working) Bill [webpage](#).

This briefing paper supersedes Library briefing paper *The Armed Forces Bill* CBP08018, published on 23 June 2017, which was written before the Bill began its stages in the Lords.

¹ "Flexible working for armed forces", Ministry of Defence, 21 June 2017

² HL Deb 11 July 2017 c1176

1. Background

The Armed Forces Act 2006

The [Armed Forces Act 2006](#) (AFA 06) provides the legal basis for the armed forces to continue to exist as a disciplined force. In the past the Act has also been used to introduce any new measures relating to the armed forces that fall outside the Act's traditional remit of service discipline. An Act is required every five years and the most recent received Royal Assent on 12 May 2016. Both the 2011 and 2016 Acts amended the 2006 Act, as will this Bill.

The Bill will amend [Section 329](#) (terms and conditions of enlistment and service) of the AFA 06 which provides for the Defence Council to make regulations regarding the terms and conditions of enlistment and service of persons enlisting.

There are four separate statutory instruments that set out the terms and conditions of service in the armed forces. Four are required to reflect the different needs of each Service. All four statutory instruments have effect as if made under section 329 of the *Armed Forces Act 2006*. The links below are to the Legislation.gov.uk website:

- [The Royal Navy Terms of Service \(Ratings\) Regulations 2006](#)
- [The Royal Marines Terms of Service Regulations 2006](#)
- [The Army Terms of Service Regulation 2007](#)
- [The Royal Air Force Terms of Service Regulations 2007](#)

In the past amendments have been made by secondary legislation. Most recently, the [Armed Forces \(Terms of Service\) Amendment Regulations 2014](#) (SI 2014/3068) amended all four instruments.³ The Government has prepared a list of Statutory Instruments which they expect will also need amending. These can be found in the appendix of this briefing paper.

Policy background

The 2015 Strategic Defence and Security Review (SDSR) explicitly committed to make changes to “enable our Armed Forces to work flexibly, reflecting the realities of modern life”.⁴

The SDSR also set the armed forces a target of recruiting at least 15% women by 2020. Currently just over 10% of regular personnel are women.⁵ The head of the Army, General Nick Carter, has said the Army needs to do more to ensure that women don't leave the armed forces: “we have a career structure at the moment that is fundamentally a male career structure. It has in it a number of break points which sadly encourage women to leave, rather than encouraging them to stay”.⁶

The Conservative Party 2017 general election manifesto stated its intention to “attract and retain the best men and women for our armed forces, including by engaging them on a flexible basis.” The [Queen's Speech](#) itself gave little away about the contents of an Armed Forces Bill but the Government's [background briefing notes](#) said the Bill's purpose is to

³ The amendment made under this instrument changed, and aligned, the maximum duration of an initial term to 12 years Regular Service from the date of joining.

⁴ “[National Security Strategy and Strategic Defence and Security Review](#)”, Cm 9161, para 4.53

⁵ Further information on women in the armed forces can be found in section 5 of Library briefing paper “[UK Defence personnel statistics](#)”, CBP-07930, 21 November 2017

⁶ “[Army 'encourages women to leave', says Chief of the General Staff](#)”, Telegraph, 17 February 2015

“support recruitment and retention in the Armed Forces by enabling flexible working arrangements for regular Service personnel”.⁷

Why is the Ministry of Defence focusing on flexible working?

Ministers and senior officers have talked at length over the last few years of the need to make the armed forces an attractive place to work to both retain personnel and attract new recruits. The impact of Service life on family and personnel life has repeatedly been the top reason given by personnel who have put in their notice to leave.⁸ The Army Families Federation reports Army families complain an unforgiving work schedule creates added strain to family life and causes many soldiers to consider leaving the Army.⁹

Providing more opportunities for flexible working may alleviate some of these concerns by enabling those with young children or other caring responsibilities (for example caring for an elderly, disabled or sick relative) the opportunity to reduce their hours and limit their time away from home.¹⁰

General Carter spoke in 2015 of the need to enable soldiers to work flexibly. He said: “if you are working in a job that is not at high readiness in an operational unit there is absolutely no reason why you should not perhaps be able to parade a bit later in the morning so that you [sic] children will be able to be dropped at the school.”¹¹

Attracting new joiners is also a key motivator. The Cabinet Office background notes on the Bill says providing personnel will more choice in the way they live and work “will be crucial in retaining and attracting key skills and in diversifying the makeup of the Armed Forces.”¹² Sir Michael Fallon, the Defence Secretary, said flexible working will “help attract and keep the talent we need to keep Britain safe”.¹³ Amber Rudd, the Home Secretary, has similarly said introducing more family-friendly regulations will help recruitment.¹⁴

The Government explained in a policy document to the Lords:

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.¹⁵

Earl Howe, the Minister of State for Defence, shepherded the Bill through the Lords. At Second Reading he argued flexible working will improve the ability of the armed forces to both attract new recruits and retain trained and skilled personnel (particularly women):

Flexible working opportunities will enhanced the delivery of operational capability through improved retention, a more diverse workforce and a broader spectrum of commitment levels when and where we need them.¹⁶

Michael Fallon, the Secretary of State for Defence, said at Second Reading:

More flexible working than we have at present would help alleviate some of the strain people face at critical times in their career, whether because of family responsibilities, caring needs, or a desire to pursue further educational opportunities. It will help us to

⁷ “[Queen’s Speech 2017: background notes](#)”, Cabinet Office, 21 June 2017

⁸ This has been reported in successive Armed Forces Continuous Attitudes Surveys. AFCAS dating back to 2010 can be found on the gov.uk [website](#).

⁹ “Army to trial flexible working”, Army Families Federation,

¹⁰ Letter from Earl Howe to Lord Touhig, 29 September 2017

¹¹ “[Job-sharing and flexible hours for soldiers in bid to double female troops](#)”, The Telegraph, 30 June 2015

¹² “[Queen’s Speech 2017: background notes](#)”, Cabinet Office, 21 June 2017

¹³ “[Flexible working for armed forces](#)”, Ministry of Defence, 21 June 2017

¹⁴ The Home Secretary’s comments were made in the context of implementing the National Security Strategy and Strategic Defence and Security Review, in [oral evidence](#) to the Joint Committee on National Security, 6 March 2017, q106

¹⁵ Armed Forces (Flexible Working) Bill (HL) Policy and Scope

¹⁶ HL Deb 11 July 2017 c1175

recruit and retain more of the people we need, and make our services more representative of the society they serve.¹⁷

The Defence Committee briefly touched on flexible arrangements in its report on the Army.¹⁸ The Committee noted the concerns expressed to it about cultural resistance within the Army to the changes being brought in, including on flexible working.

Box 1: What do personnel think?

The Armed Forces Continuous Attitudes Survey 2017 found:

- The 'impact of Service life on family and personal life' remains the top reason for leaving among all personnel
- The majority of personnel state that having the option to work part-time (63%) or have reduced separated Service (61%) has no effect on their intentions to stay or leave
- However 32% of personnel said a working part-time option increases their intention to stay, with similar levels responding across all services
- Likewise 33% of personnel said an option for reduced separated service (including operational deployment) increases their intention to stay
- There was a greater difference between the services on the option of reduced separated service, with 46% of Royal navy respondents saying this option increases their intention to stay. This may or may not be unconnected to the finding of the survey that the proportion of Royal Navy personnel spending more than four months away has increased from 49% in 2016 to 56% in 2017.¹⁹

In addition, the Defence Medical Services Continuous Attitude Survey also found medical and dental officers cited the lack of opportunities for part-time working as a reason for leaving their engagement early. This was raised by the Armed Forces Pay Review Body who welcomed the opportunities the flexible working proposals could have on recruitment and retention.²⁰

What flexible working options are currently available?

A number of informal flexible working arrangements have been in place since 2005.

However none of these allow for an individual to work fewer hours than their colleagues, as the Bill proposes. Rather, the options provide for three different arrangements to working the full number of hours:

- Variable start and finish times
- Compressed hours
- Home working²¹

In addition personnel may request to transfer leave to a serving spouse/civil partner; call forward leave from the following year; and enhanced leave for long-service personnel to take a single block of 50 days in one year.²²

¹⁷ HC Deb 30 October 2017 c624

¹⁸ Defence Committee, SDSR 2015 and the Army, 29 April 2017, HC 108 2016-17 para 119

¹⁹ AFCAS 2017 section 9

²⁰ [Armed Forces' Pay Review Body Service Medical and Dental Officers supplement to the forty-sixth report 2017](#), July 2017, para 15

²¹ These options are detailed in Joint Service Publication JSP 750 Centrally Determined Terms of Service, the relevant section of which is attached to a [letter](#) from Earl Howe to Rt Hon Lord Touhig on 29 September 2017 in response to questions raised at Committee Stage. The letter can be accessed via the 'Will Write letters' section of the Bill [webpage](#).

²² This is contained in a Defence Internal Notice (2015DIN01-182) which is not accessible by the author. However an [RAF HIVE newsletter November/December 2015](#), dated 1 November 2015, contains a brief summary; as does the [RAF website](#) and a summary is also available in a [Defence Internal Brief](#), 2015DIB/27, 22 September 2015. Joint Service Publication 760 [Tri-Service regulation for leave](#) is the relevant JSP.

1,805 applications for existing flexible working options were received between December 2016 and September 2017, with the highest number in the RAF, of which the most popular option was variable start and finish times.²³

Flexible Duties Trial

The MOD introduced a flexible duties trial for the Army (later extended to the RAF) in December 2015. The trial will continue until March 2019 (when the new arrangements are to come into effect) and allows participants to work part-time or reduce their liability to deploy. The MOD said:

The results so far indicate that part-time working options were well received by those who took part. Applications were predominantly from lower ranked officers in their late 20s or early 30s, and two thirds of applicants were female. Feedback indicates a positive impact on the individual with no significant negative impact on outputs or team cohesion. While the trial has also reinforced the need for better communications, cultural change, and safeguarding of operational pinch points, it shows that proposals for enhanced flexible working are practicable.²⁴

Other changes under consideration

The Ministry of Defence (MOD) began looking at revising the terms and conditions of service under the 2010-15 Government and have continued under the current Government. This was under the New Employment Model, first announced in the Strategic Defence and Security Review 2010.²⁵ Other elements already introduced or underway include changes to allowances; a Help to Buy scheme; a new charging system for Service Families Accommodation; a Future Accommodation Model (background and reaction to these proposals can be found in Library briefing paper [Armed Forces Housing](#), 15 June 2017) and a [New Joiners Offer](#) to apply from 2020.

²³ Letter from Earl Howe to Lord Touhig, 29 September 2017

²⁴ [Armed Forces \(Flexible Working\) Bill policy and background](#), 7 September 2017

²⁵ "[Securing Britain in an Age of Uncertainty: Strategic Defence and Security Review](#)", Cm 7948, para 2.B.7

2. The Bill

The Armed Forces (Flexible Working) Bill makes provision for regular armed forces personnel to work part-time or to restrict the amount of time they spend separated from their normal place of work.

The Bill is short, with 3 clauses:

- Clause 1: enables regular armed forces personnel to apply to work part-time and/or enable their service to be geographically restricted.
- Clause 2: makes consequential amendments to other Acts which provide personnel who opt to work part-time the same protection from jury service as full-time workers.
- Clause 3: concerns territorial extent

The Bill was introduced in the House of Lords on 28 June 2017 and was given a Second Reading on 11 July. It was considered in Committee in one sitting on 12 September 2017. The Bill was amended at Report Stage with the Government accepting an amendment to make secondary legislation subject to affirmative procedure.²⁶ On 25 October 2017 the Bill had Third Reading in the House of Lords and First Reading in the House of Commons. Second Reading was on Monday 30 October 2017. The Bill was considered in Public Bill Committee on 14 November 2017 and reported without amendment. The remaining stages will be held on 29 January 2018.

2.1 Clause 1

Clause 1 of the Bill would amend section 329 of the Armed Forces Act 2006 (AFA 06). The detailed changes will be made in regulations.

[Section 329](#) (terms and conditions of enlistment and service) of the AFA 06 provides for the Defence Council (the highest level of military command and administration under Her Majesty) to make regulations regarding the terms and conditions of enlistment and service of persons enlisting.

Clause 1(3)(a) would insert a new paragraph in section 329(2) of the AFA 06 to enable the Defence Council to make regulations providing for part-time working for members of the regular armed forces.

Clause 1(3)(b) would insert a new paragraph into the same section of the AFA 06 to enable a person's service to be restricted to a particular area or other geographic restrictions, and for the regulations to set out

²⁶ The [affirmative procedure](#) is a type of parliamentary procedure that applies to some [Statutory Instruments](#) (SIs). An SI that is laid subject to affirmative procedure requires the formal approval of both Houses of Parliament before it becomes law. Conversely, a statutory instrument under the negative procedure will automatically become law without debate unless there is an objection from either House. More information statutory instruments can be found on Library briefing paper [Statutory Instruments](#), SN06509, 15 December 2016.

the maximum number of occasions that a person could be required to serve beyond that geographic restriction.

Clause 1(4) would enable this right to be varied, suspended or terminated in prescribed circumstances.

Clause 1(5) was added during Report Stage in the Lords to require the regulations to be made under the affirmative procedure, thus enabling the House to scrutinise the Regulations when they are introduced. When it was first introduced, the Bill envisaged the changes to the existing terms of service regulations would be subject to the negative resolution procedure.²⁷ However the Delegated Powers and Regulatory Reform Committee argued the affirmative procedure should apply. Lord Touhig tabled an amendment to this effect at Report Stage which was accepted by the Government.²⁸

Earl Howe said that in practice the Government expects the new options to be “temporary, limited to defined periods and subject to service needs to maintain operational capability.” He said maintaining operational effectiveness is “our absolute red line” and contained provision for the services to vary, suspend or terminate the arrangements in circumstances to be prescribed in new regulations. He said further:

The Bill will not enable every service person to work flexibly but will create an obligation for the services to consider and decide on applications from personnel to serve under the new flexible arrangements.²⁹

The explanatory notes to the Bill state that the Government expects that the new regulations will cover:

- a. the right of an enlisted regular to apply in writing to his Service for part-time working and/or geographically-restricted service (subject to some limited restrictions to prevent an applicant 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, and the ability of a commanding officer to vary, suspend or terminate the arrangement in prescribed circumstances, for example: 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;
- d. the ability of the Service to refuse applications, broadly on the ground of maintaining operational capability;
- e. a right of appeal against a refused application to a 'higher authority' (within the Ministry of Defence). It will also continue to be possible for regulars to raise a service complaint, under the statutory service complaints system in Part 14A of the AFA 2006, if they consider they have been "wronged in relation to their service" due to any aspect of this process, including decisions taken. The independent Service Complaints Ombudsman oversees this system, and can investigate alleged maladministration in the

²⁷ Armed Forces (Flexible Working) Bill (HL) explanatory notes, 28 June 2017, para 19

²⁸ HL Deb 11 October 2017

²⁹ HL Deb 11 July 2017 c1176

handling of complaints and also the merits of the complaint itself. The Ombudsman can make findings and recommendations in a report to the Service to remedy any wrongs found.³⁰

How the application process will work

- The new options will be temporary, limited to defined periods, and subject to Service needs to maintain operational capability.
- Applicants must pass a specified qualifying period
- There will be no limits to the number of times someone can apply
- Entitlement to service accommodation will not change because of flexible working
- The services will have full control over the number of people they can allow to work flexibly
- A decision on an application will not be made by an individual's Commanding Officer but a competent military authority
- An applicant will have a right of appeal against refusal
- Each service will have its own separate appeals review body and personnel retain their right to enter a service complaint if their appeal is unsuccessful
- Applications are 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 role³¹
- The service will retain the ability to recall personnel to their full commitments in cases of national crisis.
- A period of flexible working will not of itself impact on promotion³²
- The Bill does not enable the services to force service personnel to work part-time – the application for part-time work must originate from the individual.³³

Further information on the administration is available on the Gov.uk website: [Armed Forces \(flexible working\) Bill: administration.](#)

The following sections summarise discussion of the Bill as it progressed through the House of Lords. It does not detail every amendment.

2.2 Part-time working

Members of the House of Lords raised various points with the Minister about the part-time working option. These included the impact on pay and pensions; the use of the term 'part-time'; the potential impact on service ethos; and currently available options. In response to these concerns, Earl Howe provided further details about the part-time working option³⁴:

³⁰ Armed Forces (Flexible Working) Bill (HL) explanatory notes, 28 June 2017

³¹ Armed Forces (Flexible Working) Bill (HL) Policy and Scope document

³² Earl Howe, HL Deb 11 July 2017 c1205-1210

³³ Letter from Earl Howe to Lord Craig of Radley, 29 September 2017

³⁴ Letter from Earl Howe to Lord Craig of Radley, 29 September 2017

- Regulars will remain subject to service law at all times, even when they are working part-time
- Pay and pensions will be proportionally adjusted to reflect the reduction in hours
- Allowances will continue to be paid as normal as long as the individual continues to meet the eligibility criteria
- Regular personnel will reduce the number of days they routinely attend work but, like their full-time regulars, will still be liable to attend for duty at other times. This liability will be reduced by the same proportion as an individual's hours.³⁵

The use of the phrase 'part-time' was discussed at length during the Bill's passage through the Lords. At Report Stage Lord Craig of Radley, Chief of the Defence Staff (1988-1991), tabled an amendment at Report Stage to remove the phrase 'part-time' from the face of the bill. He said the phrase part-time is "inimical to the concept and ethos of military service". Lord Craig added further:

Our amendment avoids any danger of labelling these prized individuals as statutory part-timers, which might expose them and their service to inappropriate and demoralising treatment by some colleagues or by those who might seek to disparage the good name and full commitment of the Armed Forces.

Lord Boyce, Chief of the Defence Staff (2001-2003), suggested the term 'part-time' could be used by those "ill-disposed towards us who desire to be insulting" by referring to a part-time army, navy and air force.³⁶ Lord Condon, Commissioner of the Metropolitan Police (1993-2000), said he championed flexible working in the police service and "very carefully avoided any notion of part-time" because it can be seen to "dilute notions of operational prowess, commitment, sense of duty". Lord Dannatt, Chief of General Staff (2006-2009) similarly argued against the use of the word, saying one of the Army's six core values is selfless commitment and that selfless commitment "is not divisible; it cannot be on a part-time basis". Lord West of Spithead, First Sea Lord (2002-2006), suggested the term 'part-time' could be damaging. Baroness Jolly called on the services to make it "absolutely clear" that neither part-time nor flexible are pejorative terms.

Earl Howe responded by saying the measures in the Bill have the full support of the service chiefs and that the use of the word 'part-time' is "absolutely deliberate". He said since the bill is intended to introduce part-time working, and as legislation should make its meaning clear, the wording should remain. Lord Craig's amendment was defeated on division by 181 votes to 56. This was the only amendment pushed to division during the Bill's progress through the Lords.

³⁵ Regular service personnel are paid for 24 hours, seven days a week, 365 days a week, in recognition of the fact that even when they are not actually on duty, they remain at all times liable to attend for duty if there is a need for them to do so. Letter from Earl Howe to Lord Craig of Radley, 29 September 2017.

³⁶ The Daily Mail published a story on the flexible working trial in February 2017 with the headline "[Take a pay cut to avoid war: soldiers are offered a three day week and a pay deal to dodge frontline fighting and make the army more 'family friendly' \(and even the SAS can sign up\)](#)", 12 February 2017

Baroness Jolly tabled an amendment calling for the MOD to publish in three years statistics about the impact flexible working has had on recruitment and retention. The Minister said they expect the take-up to be small to begin with and therefore evaluating the impact of flexible working measures on overall recruitment and retention rates will be “difficult to achieve in the early years of operation”.³⁷

Lord Touhig tabled an amendment explicitly defining “remuneration” as meaning basic pay, the x-factor allowance, and other universal payments. Lord Touhig sought reassurance from the Government that moving to part-time will not detrimentally affect an individual’s full remuneration. Earl Howe responded by assuring that those who move to part-time hours will have their pay proportionally reduced. The Minister also confirmed that the Bill will not result in any reduction in the basic pay, x-factor or other payments available to regulars who do not take up the new flexible working arrangements.

Earl Howe also said those working part-time will retain the entitlements currently available to full-time regulars, including Service Accommodation.

Earl Howe rejected a call by Lord Touhig for the Armed Forces Covenant Annual Report to include an assessment of the impact of part-time working on recruitment and retention, arguing the Secretary of State already has leeway to include any issue he wishes in the annual report.

Earl Atlee, at Second Reading, spoke in favour of the Bill and addressed concerns about the potential impact on deployability. Earl Atlee said “numerous staff and training appointments are not deployable. They are eminently suitable for part-time working arrangements.”

2.3 Geographic restrictions

Clause 1(3)(b) would enable an individual to restrict their service to a particular area or other geographic restriction.

The Army already uses a local service engagement under which a person can enlist and restrict their service to a particular area in the UK.

The amended powers will enable regulars from being separated from their permanent place of residence for prolonged periods.

Earl Howe said at Second Reading “this restriction is not tied to service in a particular area but prevents separation from a particular place for more than a maximum number of days or occasions each year”.

Earl Howe provided more detail on the geographic restriction in a letter to Lord Craig on 29th September 2017, responding to questions made during Grand Committee. The proposal:

- Allows personnel to temporarily restrict the amount of time they spend away from their home basis, rather than simply restricting their service to a specific geographic base;

³⁷ HL Deb 12 September 2017 c90GC

- Personnel will not be separated from their home base for more than 24 hours at a time any more than 35 times in a given year;
- But there is no geographic restriction as to where they can be asked to serve on duty, as long as this time limit is not breached. So personnel could still attend training courses or short operations away from their home base.³⁸

The Minister gave an alternative example of a driver who may be required to drive all over the country but who is guaranteed that he or she will return to their home base at the end of the working day, or to deploy on a short humanitarian mission.

2.4 Clause 2: Consequential arrangements (protection from jury service)

Clause 2 makes consequential amendments to other Acts which provide personnel who opt to work part-time the same protection from jury service as full-time workers.

The Juries Act 1974 automatically excludes full-time members of the regular armed forces from jury service. Clause 2(2)-(4) amends the Juries Act 1974 to ensure this applies also to service personnel who benefit from the new flexible options available to them. Clause 2(5) amends the Law Reform (Miscellaneous Provisions) (Scotland) Act 1980 to make similar provision about excusal from jury service in Scotland.

Under the Juries (Northern Ireland) Order 1996 persons serving in the armed forces of the UK are ineligible for jury service in Northern Ireland.

2.5 Clause 3: the territorial extent of the Bill

Clause 3 specifies the territorial extent of the Bill. Clause 1 and 3 amend the Armed Forces Act 2006 and therefore have the same territorial extent as that Act: they extend to all of the UK, the Isle of Man and the British overseas territories, except Gibraltar. Clause 2(1-4) amends the Juries Act 1974, which applies to England and Wales only. Clause 2(5) amends the Law Reform (Miscellaneous Provisions) (Scotland) Act 1980 and applies to Scotland only.

The Bill does not make provision for any matters which are within the legislative competence of the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly, therefore no legislative consent motion is being sought in relation to any provision of the Bill.

2.6 Second Reading in the Commons

Second Reading took place on 30 October 2017. Nia Griffiths welcomed the Bill in her capacity as Shadow Secretary of State for Defence, as did Carol Monaghan on behalf of the Scottish National Party.

Members from across the floor broadly welcomed the Bill and the proposals for flexible working. Many Members spoke approvingly of the

³⁸ [Letter](#) from Earl Howe to Lord Craig of Radley, 29 September 2017; [HL Deb 12 September 2017 c83GC](#)

benefits of flexible working on family life, acknowledging the sacrifices service requires on personnel and families, and expressed hope the proposals would improve individual's work-life balance.

However many members raised wider concerns about welfare issues amid concerns about a 'crisis' in recruitment and retention as a whole. Housing, pay, deployments and pressure on family life were all raised, amid personal stories of individual Members interactions with armed forces personnel.

Nia Griffiths sought assurances that individuals working part-time or geographically limiting their deployment would not have their career prospects diminished or lose eligibility for service accommodation. Dr Julian Lewis worried about the potential 'bureaucratic logjams' of appeals and if skills might be diminished. The chair of the defence asked whether the new measures will be a positive or negative signal to recruits and potential adversaries. He also asked whether individuals might take advantage of the proposals in the bill to avoid operational deployment.

Carol Monaghan welcomed the proposals but requested more information on how it will work in reality. She gave as an example whether an individual working in an Operational Pinch Point would be able to work part-time.

Ruth Smeeth, the chair of the all-party group on the armed forces covenant, welcomed the Bill but raised four issues that she argued need to be discussed further: recruitment, retention, family life and the development of female personnel. Mark Francois similarly welcomed the Bill and the Government's acceptance of the recommendations he made in his paper about recruitment 'Filling the Ranks'.

Stewart Malcolm McDonald put forward the SNP's call for a representative body for members of the armed forces to be put in a statutory footing.

2.7 Committee Stage in the Commons

Line by line consideration of the bill took place in Public Bill Committee on 14 November 2017. All the amendments were probing amendments and withdrawn. New clauses were considered and withdrawn. The Bill was reported, without amendment.

Gerald Jones introduced a number of probing amendments. Mr Jones asked whether the Government planned to place a limit on the number of personnel who could work part-time and if so, at what level a cap would be placed. His amendment suggested a cap of 15% in any one regiment. He raised concerns about the potential impact on Operational Pinch Points (those areas where there is such a shortfall in trained strength that it has a detrimental impact) if a number of those personnel were to work part-time. Under this amendment Kevan Jones asked how the proposal will work across the various ranks and also asked for details of the appeals mechanism.

Tobias Ellwood, the Minister responding, said any requests would be considered in line with the requirement for operational capability: “ultimately, operational capability is of first and foremost importance, and it must not be affected at all by any aspect of the bill”.³⁹ The Minister explained that the MOD believes take-up will be relatively small, around 1%. He concluded that while the suggested 15% cap was put forward with good intentions it would “inevitably prove unhelpful” and suggested there is no appetite for the placement of a cap or an arbitrary limit.⁴⁰ The amendment was withdrawn.

Carol Monaghan tabled an amendment to require the Secretary of State to report annually to Parliament on instances where the right to work part-time or in a geographically restricted area has been varied, suspended or terminated. Ms Monaghan said it was important for Parliament to know exactly what the uptake is and across which services, and why applications have been refused. The Minister said that because careful consideration will be given to applications when they are made, they don’t anticipate the need to vary, suspend or terminate any arrangements. He added the armed forces will retain the right to recall that individual if operational capability demands.

Mr Ellwood suggested collating and reporting the information for the size of cohort expected to take up the new opportunities – about 1% - “will not provide significant or beneficial data”. He added the internal systems will be able to capture the information and report to Parliament in “the usual way”.⁴¹ The amendment was withdrawn.

Gerald Jones and Carol Monaghan tabled (separately) two amendments asking for independent evaluations to be made on (1) recruiting methods and (2) armed forces housing contracts.

Gerald Jones asked how the Government intends to measure how the proposals affect recruitment. The Minister said intake on strength by rank, trade and specialisation are provided in the ‘UK armed forces monthly service personnel statistics’ (although from November 2017 this has become a quarterly publication). Mr Ellwood said as take-up is likely to be low, any detailed evaluation of the impact of the new flexible working measures on overall recruitment will be difficult to achieve in the early years of operation. He added requiring independent evaluation would be unnecessarily costly and potentially delay the introduction of the measures. The amendment was withdrawn.⁴²

Kevan Jones asked if the MOD had considering offering part-time posts as part of recruitment, which the Minister said he would consider.

Carol Monaghan raised concerns about housing and in particular what impact a change in working arrangements might have on a service personnel’s eligibility to housing. The Minister repeated assurances made during the passage of the Bill that regular service personnel, when taking part-time work, will retain those entitlements currently available

³⁹ PBC Deb 14 November 2017 c7

⁴⁰ PBC Deb 14 November 2017 c8

⁴¹ PBC Deb 14 November 2017 c10

⁴² PBC Deb 14 November 2017 c14-15

to full-time regulars. This includes if they are redeployed and require new accommodation. Mr Ellwood added "eligibility under the future accommodation model will not be altered for personnel who work part time or who are subject to geographical restriction when the new measures come into force".⁴³ The amendment was withdrawn.

Gerald Jones also pressed for regular reporting of the number of personnel working part-time and for those numbers to be included in the biannual diversity statistics. The Minister said since the take-up is expected to be small the collating and reporting information "would not provide significant or beneficial data". He suggested instead that Members seeking such information could table questions.

Kevan Jones asked why the new bill will not be extended to Gibraltar. The Minister replied:

We have been liaising with the Gibraltarian Government about whether any provision of the Armed Forces Act 2006, with which he will be familiar, should be part of the new law of Gibraltar. They have undertaken to introduce their own legislation in the near future to effect this.⁴⁴

Gerald Jones tabled an amendment seeking assurances that current flexible working arrangements would continue. The Minister assured him that "we have no intention of withdrawing any existing opportunities for flexible working".⁴⁵

The bill was reported without amendment.

⁴³ PBC Deb 14 November 2017 c19

⁴⁴ PBC Deb 14 November 2017 c21

⁴⁵ PBC Deb 14 November 2017 c24

Appendix: changes to existing statutory instruments

As outlined above, the Bill enables the Defence Council to make changes to regulations to enable the Bill's provisions to come into effect.

The Government has identified the following Statutory Instruments (SIs) that it believes will need to be amended. These cover Armed Forces pensions, redundancy, compensation and other conditions of service:

- The Army Terms of Service Regulations 2007 SI 2007/3382
- The Royal Air Force Terms of Service Regulations 2007 SI 2007/650
- The Royal Navy Terms of Service (Ratings) Regulations 2006 SI 2006/2918
- The Royal Marines Terms of Service Regulations 2006 SI 2006/2917
- The Armed Forces Pension Regulations 2014 SI 2014/2336
- The Armed Forces Pension Scheme Order 2005 SI 2005/438
- The Armed Forces (Enhanced Learning Credits Scheme and Further and Higher Education Commitments Scheme) Order 2012 SI 2012/1796
- The Armed Forces Early Departure Payments Scheme Order 2005 SI 2005/437
- The Armed Forces Early Departure Payments Scheme Regulations 2014 SI 2014/2328
- The Armed Forces (Redundancy, Resettlement and Gratuity Earnings Schemes) (No 2) Order 2010 SI 2010/832
- The Armed Forces Redundancy Scheme Order 2006 SI 2006/55
- The Armed Forces and Reserve Forces (Compensation Scheme) Order 2011 SI 2011/517
- The Armed Forces (Redundancy, Resettlement and Gratuity Earnings Schemes) (No2) Order 2010 SI 2010/832

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