



Ministry of Defence

THE RT HON THE EARL HOWE PC
MINISTER OF STATE IN THE HOUSE OF LORDS

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MSU/4/8/2/3/SM

29th September 2017

Dear Sir,

Thank you for your continued interest in the Armed Forces (Flexible Working) Bill and your thoughtful contributions during Grand Committee. I promised to write to you with further details on existing flexible working options available to the Armed Forces.

I am pleased that my effort to engage with Peers following Second Reading and information published by my Department ahead of Grand Committee were well received. I hope this further explanation went some way to alleviate many of the earlier concerns raised by Peers about the evidence underpinning new part-time working measures and the policy development surrounding these. The distinction between current flexible working options and new part-time working measures which will come about through primary legislation still requires some clarification and it is apparent that further information regarding the operation of current flexible working options would be helpful.

You will recall that during the debates in Grand Committee, I explained that the UK Armed Forces have had a number of informal flexible working arrangements in place since 2005. Existing flexible working arrangements were gradually introduced to allow Service personnel a degree of freedom when attempting to balance their work and personal life in line with operational requirements. None of the current options allows an individual to work fewer hours than their colleagues; these are variable start and finish times, compressed hours, and home working. In December 2016, the overarching policy governing flexible working options was refreshed and changes made to regularise the application process and enable the Joint Personnel Administration system to be used to log applications and provide management information on applications and approvals for all three Services. Furthermore, the policy and procedure governing various flexible working options were standardised and published in Joint Service Publication 750: Centrally Determined Terms of Service (JSP 750). JSP 750 sets out the range of flexible working options available, the key aspects of each option, the staffing of applications, and direction for applicants and Commanding Officers to consider in accordance with the policy. I am pleased to provide a copy of this information, which is at Annex A.

JSP 750 stipulates that any individual on trained strength for either Regular or Reserve Forces may apply to their Commanding Officer or line manager to work flexibly. The

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procedure ensures that all applications for flexible working are considered formally and consistently across the Services. In Committee, you asked about existing flexible working options and the overall rate of applications for options set out in JSP 750 across the Armed Forces between December 2016 and September 2017. The total number of applications across the Armed Forces for this period was 1,805. Within the RAF, 949 personnel applied to work flexibly with variable start and finish times being the most popular option with 283 applications. The Army received 419 applications; and 437 applications were considered for Naval personnel with call forward of leave being the most popular option with 207 applications. These figures do not reflect the proportion of ongoing flexible working arrangements in place before December 2016 when the requirement to record applications came into force; the actual number of personnel undertaking a flexible working pattern is known to be higher.

When speaking to Amendment 9, you also asked whether it is intended that existing flexible working arrangements will operate alongside the part-time working arrangements outlined by the Bill. Current available options such as working from home, compressed hours, and variable start and finish times exist to enable a change in work pattern to better support an individual's personal circumstances. This is to recognise that a small variation in an individual's working arrangement can have a positive impact on their work life balance. It is right to say that in cases where an individual requires a short term variation in their work pattern such as compressed hours over a few months in order to have half days off to support a sick relative with medical appointments, existing options will be adequate. However, there will be individual circumstances, such as caring for a child of pre-school age or relatives with a long term illness, where existing options will not be sufficient and a significant reduction in working hours over a longer period, which can be facilitated through part-time working, will be the best possible option. The new part-time working measures are being developed with these sorts of scenarios in mind for those personnel who are unable to benefit from a varied work pattern and have a genuine requirement for a reduction in their hours to manage ongoing personal circumstances.

In providing our personnel with a range of flexible working options, which will include new measures to work part-time or be subject to geographical restriction, our aim is for an individual and their Commanding Officer to agree to a mutually acceptable work routine. To this end, individuals are encouraged to discuss their particular circumstances with their Commanding Officer and provide their reasons for applying to work flexibly; this will enable the best possible option to be considered.

Work is in hand to ensure that information on existing flexible working opportunities and the policy governing available options is widespread and filtered down at local level. Engagement with each Service since the development of JSP 750 continues through a Tri-Service Working Group that was set up to review and codify flexible working in the Armed Forces with representatives from the Navy, Army, RAF and Joint Forces Command. Each of the single Services continues to publicise the flexible working policy and options. Further communications are planned with more user-friendly guidance on

the options available; this is to better support individuals and commanders and ensure that both parties undertake an informed discussion when considering the best possible option. The development of a Flexible Engagements System Communications Plan for new part-time working and geographical restriction options will ensure that these measures will be delivered and communicated across Defence in the same manner.

A copy of this letter has been sent to all those who spoke in Grand Committee and a copy placed in the Library of the House.

I hope you find this information helpful.

Yours sincerely,

Freddie

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1 Flexible Working Policy

Rationale

1. Many Service personnel have to balance commitments at work with a variety of personal responsibilities, such as for young children, disabled dependants and sick or elderly relatives. The Ministry of Defence wishes to provide its Service personnel with a positive experience in the workplace and, if properly handled, flexible working arrangements can significantly aid retention and morale.

Eligibility

2. Any individual on the trained strength of either the Regular or Reserve (FTRS and ADC) Forces may apply to their CO/LM to work flexibly. In exceptional circumstances, the CO/LM may decide to offer some form of flexible working to Service personnel who have been in service for less than 26 weeks.

Types of Flexible Working

3. Flexible working arrangements allow an individual a degree of freedom when attempting to balance their work and personal life. Being able to maintain a balance between personal life and Service commitments may be a contributory factor towards recruitment, retention and the overall effectiveness of the Armed Forces. Flexible working options include both working patterns and the use of paid and unpaid leave options. Guidance on leave options is in JSP 760.

4. **Flexible Working Hours (including Home Working).** There are three flexible working options available to Service personnel under this heading, which involve working the full number of hours associated with the individual's role over a specific period¹, but with scope to vary the hours on a day to day basis. These arrangements should be reviewed every 12 months, or earlier if circumstances change.

a. Variable Start and Finish Times. This allows Service personnel to start and finish their working day at different times from those considered to be the 'norm' within their working environment, although the total number of hours worked will not be less than those considered to be normal for the role. This measure may cover part or the whole of the length of an assignment.

¹ This would usually be a week but may vary according to the role and working pattern.

b. Home Working. This allows Service personnel to carry out their work from home where to do so would allow greater flexibility in meeting their domestic needs and where the nature of the work allows. Some roles are less suited to home working than others².

(1) *Ad-hoc Home Working*. Is an informal arrangement which allows personnel the opportunity to occasionally work at home (at CO/LM discretion) to complete a particular task or project. Personnel on DII-enabled units should consider the use of DII laptops for temporary periods working away from the office.

(2) *Regular Home Working*. Allows personnel the opportunity to have a more regular home working arrangement in place. Working time would be shared between home and the workplace.

c. Compressed Hours. This allows individuals to work the normal number of hours for their role but over a shorter period³ to allow flexibility for travel or other domestic demands during the week. For example this would allow an individual working away from home on a conventional Monday to Friday pattern to start late on a Monday and finish early on a Friday to facilitate travel by working extended hours on the other days. Equivalent arrangements can be made for those on shift or other working patterns.

Applications

5. Applications for flexible working must be submitted on JPA. All applications must be given fair consideration on a case-by-case basis and the CO/LM of the individual must respond formally either agreeing to a new work pattern (including the start date, initial duration and completion and review dates) or providing clear grounds as to why the application cannot be approved. Reasons for rejecting an application must have a basis in business needs or operational capability. Further guidance on the timescales for considering applications and factors to be considered appears below and a guide for individuals summarising the key aspects of Flexible Working is at Annex A.

² Regardless of whether it is ad-hoc or regular, appropriate security arrangements will need to be put in place to ensure that protectively marked material is not compromised. Further detail is available on this subject within JSP 440 (Defence Manual of Security) and guidance can be sought from unit security staff. For further details on health and safety see JSP375 (Management of Health and Safety in Defence).

³ SP do not have 'conditioned hours' or overtime arrangements therefore the average weekly hours worked will vary according to Service, rank, unit and location. The CO/LM must therefore determine the working 'norm' for that particular unit at that specific time.

Ending a Flexible Working Arrangement

6. Whilst MOD seeks to give up to 28 days⁴ prior notification of its intention to terminate any flexible working arrangement, this cannot be guaranteed. A further application is required when the individual is extended or assigned to another unit, and this application will be considered on its own merits. There should be no expectation that an assignment will be extended beyond its normal length because a flexible working arrangement is in place, or that the arrangement will be extended beyond currently authorised periods or allowed in any new unit following an assignment or unit move.

7. Service personnel using flexible working remain liable to be deployed, attend courses, exercises and to perform unit duties. Deployment will result in the flexible working agreement being withdrawn.

8. The Armed Forces are exempt from the flexible working provisions of UK employment legislation. They will, however, within the terms set out in this JSP, try to accommodate flexible working arrangement requests where they do not impact excessively on operational capability, and where they are otherwise appropriate to the Service need. It should be noted that flexible working is not a right, and it may not always be possible for the reasons detailed in this JSP to accommodate all requests due to the ways in which different arms and branches of the Services operate.

Staffing of Applications

9. Applications for flexible working may cover part or the whole duration of an individual's assignment and, if of more than a year's duration, should be subject to review by the CO/LM at the 12 month point. Should the circumstances of the unit/section or Service person change prior to the 12 month point, a review of the flexible working arrangement may take place sooner.

10. To manage expectations, individuals are encouraged to discuss proposals informally with their CO/LM prior to formally applying. Within 14 calendar days from submission of a request, the CO/LM should meet the applicant to explore the proposed work pattern and discuss how it might be best accommodated. Where a conversation did not take place prior to the request being submitted, this provides an opportunity to consider other working patterns should there be problems accommodating the original request. In all cases, within 21 calendar days of the request, and within seven calendar days of any meeting, the CO/LM must write to the applicant with the outcome. Applicants should be made aware that they may appeal against the decision in accordance with normal Service Complaints procedures. Care should be taken, particularly in joint units,

⁴ This should be increased to over 52 days if a Service person is on maternity or shared parental leave and has an agreed flexible working pattern on their return.

to ensure that the rules are applied in a consistent way. Any changes to the original agreement should also be agreed in writing to avoid any ambiguity later and to provide an audit trail.

Considerations When Making or Handling Applications for Flexible Working

11. Many Service personnel have to balance commitments at work with a variety of personal responsibilities, such as for young children or for sick, disabled or elderly relatives. Even a small variation in start and finish times during routine work periods can have a significant positive impact on the individual's work-life balance. The unit might also benefit from having a potentially less distracted, and therefore more focussed and effective worker.

12. A flexible working arrangement is not intended to allow an individual to work fewer hours than their colleagues, but it does involve a re-assessment of working patterns and a move away from fixed times during which output is delivered. Equally, Service personnel with access to flexible working will still be expected to perform unit duties.

13. Arrangements need to be tailored to each situation, because a flexible working pattern agreed for one individual may not suit the business or personal needs of a different area or a different person within the same unit. Care needs to be taken to ensure that, when catering for an individual's needs, operational capability is not compromised, nor colleagues disadvantaged. Thus arrangements should not be agreed that would prevent an individual meeting their operational commitments when required. The goal should be for the individual and the CO/LM to agree a mutually agreeable working routine. To this end applicants should discuss any flexible working proposals informally with their line manager prior to submitting a formal application to work flexibly.

14. COs/LMs must consider requests to vary working patterns in accordance with this guidance and Service personnel should expect that their application will be considered fairly. The applicant should be encouraged to provide their reason for applying to work flexibly to enable potential solutions to be considered. However when considering an application for flexible working, the CO/LM's judgement must focus on whether the application can be supported, taking into account the needs of the Service, rather than on any judgement as to the merits of the individual's reasons. COs/LMs will need to exercise consistent and considered judgement to ensure that applications are considered fairly and to record their decisions.

Record Keeping

15. Agreements between the CO/LM and applicant, including any declined applications, should be retained within the applicant's personal documentation. There is no requirement for

the specific hours subsequently worked to be recorded either on individual or unit records; however, the CO/LM will need to satisfy themselves that individuals on flexible working are working the requisite number of hours and providing the required output.

Further Guidance

16. At unit level, queries on flexible working should be directed, initially, through unit HR staff, to single-Service Employment Policy staff officers:

RN: NAVY PERS-CNPS EMPLOYMT POL SO1
023 92 625514

Army: ARMY PersSvcs-PS4-HealthSO1
01264 381759

RAF: Air PersPol-EmpPol SO2
01494 495048

Annex

A. Flexible Working – A Guide for Individuals.

**ANNEX A
TO CHAPTER 1**

FLEXIBLE WORKING – A GUIDE FOR INDIVIDUALS

Who does this apply to?

All Service personnel.

Why?

To enable freedom and flexibility for individuals to balance work and personal commitments.

To benefit the Service in terms of increased efficiency, reduction of sickness and stress related absence, improved recruitment and reduced turnover of trained and high calibre staff.

Key Points

<p><i>It is not permanent and is subject to review</i></p>	<p>It may cover the whole or part or the whole of your assignment, however it should not be assumed that a flexible working arrangement will cover a full or consecutive tours. The arrangement will also be reviewed on a regular basis (at least every 12 months). Either party can review prior to the 12 month point and, if necessary, give notice to cancel the arrangement at any time, where possible providing at least 28 days' prior notification.</p>
<p><i>It must be agreed in writing</i></p>	<p>You and your CO/LM will need to sign a written agreement⁵ which lays out the arrangements and this will be reviewed on a regular basis (at least every 12 months). Either party can review prior to the 12 month point and if necessary, give notice to cancel the arrangement at any time, where possible providing at least 28 days' prior notification. It is not necessary to record the specific hours actually worked.</p>
<p><i>Approval will be subject to Service need</i></p>	<p>Your CO/LM will only permit this flexibility where it does not impinge on operational capability or impact upon your work colleagues in a negative way. It may not be possible for your CO/LM to approve variable start and finish times where there are other arrangements already in place for other Service personnel under their command. If approved, it may only be possible for a short term or may be cancelled if the arrangement cannot be sustained, so you should not rely on it as a long-term solution.</p>

Variable start and finish times

⁵ Excluding ad hoc homeworking.

<p><i>Start and finish your working day at different times</i></p>	<p>Allows you to start and finish your working day at different times from those considered to be the 'norm' within your working environment, although the total number of hours worked will not be less than those considered to be normal for your role. A record of any agreement should be kept on your personal file, along with a record of any declined applications. In cases of doubt you should seek further assistance from your unit HR.</p>
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Home-working (Ad-hoc or Regularly)

<p><i>Allows you to carry out your work from home</i></p>	<p>Where to do so would allow you greater flexibility in meeting your domestic needs and where the nature of your work allows.</p>
<p><i>Occasionally when the need arises</i></p>	<p>Ad-hoc Home-Working. This may be where occasionally your CO/LM allows you the opportunity to work at home to complete a particular task or project. Working time would still be shared between home and the workplace; however these are informal arrangements and no written agreement is required.</p>
<p><i>Or more regularly</i></p>	<p>Regular Home-Working. Working time would still be shared between home and the workplace and it would be appropriate to have a written agreement in place if you are working from home regularly. It may also be appropriate for a specified period to assist you through a period of personal difficulty.</p>

Compressed hours

<p><i>Work full-time hours in a shorter timeframe.</i></p>	<p>Compressed hours allow you to work your normal number of agreed hours over a reduced number of days, or to take some longer days, to allow a shorter day in the week (such as finishing early on a Friday, and starting late on a Monday to allow for a long commute).</p> <p>A variation on this theme might be a reduced number of hours in one week followed by an increase in the next to make up the difference. These agreements should not lead to an overall reduction in hours worked during the week, so are agreed in return for longer working days during the remainder of the week.</p>
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Copy to:

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Lord Touhig

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Earl Attlee

Baroness Smith of Newnham

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