



Ministry of Defence

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

MSU/4/8/2/3/ap

29th September 2017

Dear David,

Thank you for your interest of the Armed Forces (Flexible Working) Bill and your thoughtful contributions during Grand Committee.

I am grateful for the further opportunity to set out the Government's position on the specific points you raised. I hope my response will provide the additional clarity you seek.

It might be helpful if I start with a reminder of the key changes the Bill will introduce before going into the wider detail.

The provisions contained in the Bill will give effect to two new types of flexible working, for temporary periods in a service career:

- the introduction of part-time working for Regular Service personnel; and
- enabling Regular Service personnel to restrict the amount of time for which they are separated from their home base.

The term "flexible working" covers both the new opportunities and the existing ones. I have, therefore, consistently used the collective term "flexible working" to describe them during briefings, debates, the letters I have written on this subject, and in the supporting information my officials have published.

These new opportunities will provide our people with additional flexibility that we know many of them seek, and we judge that in the long term, they will help to improve recruitment and retention in the Armed Forces.

We intend to limit these new opportunities to periods of no more than three years at any one time, or to the end of an assignment, whichever is the sooner. Personnel who apply to restrict the amount of time they are separated from their home base will remain liable for a maximum of 35 days separation in any one year. We also intend to restrict the total cumulative time that a Service person can serve on new flexible working arrangements and at present, we envisage that this limit will be a maximum of four years in a twelve year rolling period.

Marshal of the Royal Air Force the Lord Craig of Radley GCB OBE MA DSc FRAeS
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Personnel who work part-time will see their pay reduced to reflect the reduction in the amount of work they will be expected to do. In short, part-time work will equal part-time pay. However, personnel who take up the new opportunities will remain subject to Service law at all times and the Services will retain the right to recall the individual to full time Service in certain circumstances, which will be set out in regulations. At present, we envisage that the circumstances in which the Services will be able to call the individual back to service will include a time of national crisis or where there has been a significant change in the circumstances which supported the original decision (for example, a manning crisis).

Part-time working and the ability to restrict absence from the home base are new flexible working tools, which if approved, will be added to the suite of flexible working opportunities which the Ministry of Defence (MOD) already has in place, some of which our people have been using since 2005.

I agree with the Bishop of Portsmouth, who said at Grand Committee that part-time is an honorable working pattern, including for those whose service and work is a vocation. I am also reassured by the briefing session I held on 11 July, where two serving Commanding Officers attended. You may recall that both genuinely welcomed the introduction of part-time working, which they saw as another way of looking after our people at times in their career when they need it most.

I understand that you oppose the use of the term 'part-time' in the Bill and, following your meeting with my officials on 26 September, they have considered with Parliamentary Counsel whether there is another form of words which will sufficiently describe the form of service we envisage, without using this phrase. It is clear that we will not be able to amend the long title of the Bill in the House of Lords. The long title reads as follows:

"A Bill to make provision for members of the regular forces to serve part-time or subject to geographic restrictions".

This means that the word part-time will remain on the face of the Bill, as part of the long title, even if the other wording were to be changed. I note that the phrase "part-time" has been used in a previous Armed Forces Act, and thus this is not an unprecedented use of the phrase in our legislation.

The flexible working opportunities which the MOD currently offers, such as working from home, compressed hours, and varied start and finish times do not result in any loss of pay for Service personnel, and there is no reduction in the work they are expected to do when on duty. Other current forms of flexible working include unpaid leave, such as career intermissions, which do result in a loss of pay. However, a key feature of these existing flexible working arrangements is that they do not provide Service personnel with certainty that the arrangement will not be changed or terminated in the way that the new opportunities will.

If the new arrangements are to be credible and viable, Service personnel must be afforded some protections after they have taken what will be, for many, a major career decision. We expect that Service personnel will take advantage of these opportunities in circumstances where they require a degree of certainty in order to plan their personal lives. It is worth repeating that the amendments to primary legislation simply provide us with the power to make regulations to enable these particular forms of flexible working. We currently envisage that the regulations made as a result of this Bill will provide that Service personnel will have the right to apply for the new forms of service, but they will not confer a right to have the arrangement agreed. Nevertheless, once such a request has been approved, we intend that it will create an arrangement which may only be varied, suspended or terminated in accordance with regulations made under the 2006 Act. This will give our people confidence that when such an arrangement is approved, MOD will not be able to unilaterally change it unless the exceptional circumstances set out in legislation apply. It is necessary to make this small amendment to the primary legislation to enable this.

You asked in Grand Committee how absence would be measured. Let me be clear that absence will be measured in days, rather than hours. In view of the unique nature of regular service, as described above, it is not appropriate to use the more usual method of adjusting hours worked, and so we will reduce the individual's liability for duty by a commensurate proportion. At present, we expect that our people will only be able to work part-time for one or two days a week at most. Regular Service personnel are currently paid for 24 hours, seven days a week, for 365 days of the year, 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. Regulars who move on to a part time working pattern, will reduce the number of days that they routinely attend work (for example from five days to four) but, like their full time counterparts, they will still be liable to attend for duty at other times and this liability to attend for duty will be proportionately less than that of a full-time regular.

As you have quite rightly pointed out, there is a current power in s329 which provides for regulations to allow a person to restrict their service to a particular area, and for providing that such Service personnel may be required to work outside of that area for a certain maximum number of days per year. The regulations made under these provisions currently apply to the Military Provost Guard Service (MPGS), who are regulars, serving on a full-time commitment. However, on enlisting they specify where they will serve and this cannot be varied without their consent.

The new type of geographically restricted service we wish to introduce goes beyond this. It focuses on giving personnel the right to temporarily restrict the amount of time they spend away from their home base, rather than simply restricting their service to a specific geographic area. In practice, we envisage that this will mean that Service 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. However, there is no geographic restriction on where they can be asked to serve while on duty, as long as this time limit is not breached. Service personnel with this restriction may thus be required to undertake short operations or training courses, which require them to spend several days at a time

away from their home base. An example of how this could work is the case of a Service person on restricted separation, who is deployed on a humanitarian relief mission for a short period. Another example might be a driver, who is required to drive all over the country during the working day, but who is guaranteed that he or she will return to their home base at the end of the working day. The new wording proposed in the Bill is broad enough to enable the current MPGS engagement, as well as the new type of limited separation service we envisage. The changes to Armed Forces regulations that we will make will ensure that the impetus for the new arrangement must come from the Service person concerned, and will clearly set out the circumstances in which such arrangements can be changed or ended; this will protect our people and provide them with the certainty they will require. I am therefore content that it could not, as you suggest, be used by a future administration to force an individual into part-time working or to serve in a particular location.

You have also queried whether it is necessary for the Bill to include the new subsection (3A), given that the existing subsection (3) provides for that the exercise of any rights conferred by s329(2) may be made subject to prescribed conditions. There is a difference between what the existing provision does, and what the new provisions will achieve. The difference is fairly technical but important.

The existing provision refers to the “*exercise of a right conferred by virtue of subsection (2)*” and provides that prescribed conditions may be attached to the exercise of such rights. Although s329(2) does not of itself confer rights on any individual, regulations made under it may confer rights on Service personnel in certain circumstances. An example of this is found in regulation 11 of The Army Terms of Service Regulations 2007, which provides that an enlisted person has the right to be transferred to the reserve if they comply with certain conditions. However, an individual can only exercise this right if the provisions of regulation 15 do not apply to them. So, in legislative language, the exercise of the right has been made subject to prescribed conditions, as provided in the existing subsection (3).

This is not what the new subsection (3A) seeks to do. The new provisions will enable Defence to make regulations which will enable part-time service and the new type of restricted geographical service. In the case of part-time working, these regulations are likely to include provisions covering the following:

- that individuals have the right to apply for part-time working, possibly subject to some express restrictions;
- that the application will be considered by a competent military authority (not individual COs);
- the ability of Service to refuse applications;
- right of appeal against refusal.

All of the above can be done under the current wording of section 329(3). Once a request to work part-time (for example) has been approved, the individual will have a right to work in this way, unless the agreement is altered or terminated. However, altering or terminating the agreement is not an exercise of a right conferred and thus the new wording is required. The new subsection (3A) will require Defence to set out in regulations the circumstances in which the right to work part-time, conferred as a result of the approved request, can be altered, suspended and terminated. In order for the arrangements that we propose to be credible and meaningful to our people, it is important that they cannot be changed, other than in accordance with regulations that we will make under this section.

I hope this detailed response has answered your questions and that you will now feel able to give this Bill your support.

A copy of this letter has been sent to all who took part in the debate and placed in the Library of the House.

Yours sincerely,

Kenneth

THE RT HON EARL HOWE PC

Copy to:

Lord Craig

Baroness Jolly

Lord Stirrup

Lord Ramsbotham

Baroness Burt

Lord Bishop of Portsmouth

Lord Touhig

Lord Listowel

Earl Attlee

Baroness Smith of Newnham

Lord Tunncliffe