

# ARMED FORCES (FLEXIBLE WORKING) BILL [HL]

## EXPLANATORY NOTES

### What these notes do

These Explanatory Notes relate to the Armed Forces (Flexible Working) Bill [HL] as brought from the House of Lords on 25 October 2017 (Bill 118).

- These Explanatory Notes have been prepared by the Ministry of Defence in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

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## Overview of the Bill

- 1 The Bill makes provision for part-time service by members of the regular Armed Forces and for their service to be subject to geographic restrictions.

## Policy background

- 2 At present, all regulars are subject to a liability to be available for duty all day, every day. Whilst there are some limited opportunities for some regulars to work flexibly, such as working compressed hours or working from home on occasion, there is no ability for regulars to work part-time or to have a guarantee that they will not be liable for an extended overseas deployment.
- 3 It was recognised by the last Government, in its [Strategic Defence and Security Review 2015](#), that there was a need to: “make the changes necessary to enable our Armed Forces to work flexibly, reflecting the realities of modern life”. Acknowledging that members of the Armed Forces, like their civilian counterparts, want to have more control over how they run their lives by better balancing work and home life, this Bill amends the Armed Forces Act 2006 (“AFA 2006”) to enable provisions to be made [in secondary legislation] about part-time service for regulars and enabling their service to be geographically restricted. Regulars will be able to apply for either, or both, forms of new service once the Bill is implemented.

## Legal background

- 4 The legislation relating to terms and conditions of enlistment and service for members of the regular forces is set out in a combination of primary and subordinate legislation. The current provisions are:
  - section 329 of AFA 2006;
  - 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); and
  - the Royal Marines Terms of Service Regulations 2006 (SI 2006/2917).
- 5 AFA 2006 will continue to be the main Act providing for terms and conditions of enlistment and service for regulars, and this Bill amends that Act by inserting new provisions into it and also substituting existing provisions.

## Territorial extent and application

- 6 Clause 3(5) to (8) sets out the territorial extent of the Bill, that is the jurisdictions of which the Bill forms part of the law. The extent of a Bill can be different from its application. Application is about where a Bill produces a practical effect.
- 7 Clause 1 amends AFA 2006 and so has the same extent as the provisions in that Act; it extends to the whole of the UK, the Isle of Man and the British overseas territories, except Gibraltar. Clause 3 has the same extent as clause 1.
- 8 Clause 2(1) to (4) amends the Juries Act 1974 to ensure that once regulars move on to part-time service they can continue to benefit from the provisions allowing for automatic excusal and discretionary deferral from jury service in England and Wales. Those consequential amendments have the same extent as the 1974 Act; they are part of the law of England and Wales only.
- 9 Clause 2(5) amends the Law Reform (Miscellaneous Provisions) (Scotland) Act 1980 (persons excusable as of right from jury service) similarly to ensure that once regulars move on to part-time service they will continue to benefit from the provisions allowing for automatic excusal from jury service in Scotland. Those consequential amendments have the same extent as the 1980 Act; they are part of the law of Scotland only.
- 10 There is a convention that Westminster will not normally legislate with regard to matters that are within the legislative competence of the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly without the consent of the legislature concerned. The matters to which the provisions of the Bill relate are not within the legislative competence of the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly, because they relate to the Armed Forces, and no legislative consent motion is being sought in relation to any provision of the Bill. If there are amendments relating to matters within the legislative competence of Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly, the consent of the relevant devolved legislature(s) will be sought for the amendments.
- 11 The changes that this Bill makes to AFA 2006 may be extended by Order in Council to the Channel Islands. If such an Order is made, it can modify those changes (so that the law of the Channel Islands is not the same as that of the United Kingdom).
- 12 The changes that this Bill makes to the AFA 2006 extend directly (i.e. without the need for an Order in Council) to the Isle of Man, and the British overseas territories (except Gibraltar), but an Order in Council may be made to modify the Act in its application to any of those territories.
- 13 The provisions applicable to members of the armed forces will apply to them wherever they are in the world.
- 14 See the table in Annex A for a summary of the position regarding territorial extent and application in the United Kingdom. The table also summarises the position regarding legislative consent motions and matters relevant to Standing Orders Nos. 83J to 83X of the Standing Orders of the House of Commons relating to Public Business.

# Commentary on provisions of Bill

## Clause 1: Regular forces: part-time service and geographic restrictions

- 15 Subsections (3) and (4) of clause 1 amend section 329 of AFA 2006. Subsection (3)(a) inserts into section 329(2) a new paragraph (ha) which extends an existing regulation-making power so that the Defence Council (the highest level of military command and administration under Her Majesty) can make provision by regulations about part-time service for members of the regular Armed Forces. Subsection (3)(b) substitutes the existing paragraphs (i) and (j) of section 329(2) to enable the Defence Council to make regulations about geographically-restricted service for regulars and the maximum number of occasions a regular can be required to serve without such a geographic restriction.
- 16 Subsection (4) of clause 1 inserts into AFA 2006 a new section 329(3A). This provides that rights conferred on a person under the new regulations made about part-time service or geographically-restricted service may be varied, suspended or terminated in prescribed circumstances.
- 17 Individuals will not need to specify any particular reason for wanting to move on to one of these new forms of service. It is anticipated that these new forms of service will be attractive, for example, for regulars who want to spend some more time with their families, for those who may wish to study for an extended period without having to leave the Service, or for those who have caring commitments.
- 18 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 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 the Service or the individual 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 defence need;
  - e. a right of appeal against a refused application to a 'higher authority' (within 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 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 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.
- 19 Subsection (5) of clause 1 amends section 373 of AFA 2006, by inserting a new paragraph (ea) into section 373(3). The effect of this paragraph is that any regulations made under the new provisions inserted into AFA 2006 by this Bill will be subject to the affirmative procedure.
- 20 There are currently four sets of terms of service regulations made by the Defence Council under section 329 AFA 2006. The regulations are listed above in the Legal Background section.

It is envisaged that the necessary changes to be made by the new Defence Council regulations will be by way of amendments to the existing terms of service regulations.

- 21 Section 329(2)(i) and (j) AFA 2006 already permits the Defence Council to make regulations about geographically-restricted service. The only current use of that power is in the Army. Their terms of service regulations make provision for a local service engagement under which a person can enlist and restrict their service to a particular area in the UK. Those enlisted for local service can only be required to serve outside their specified area for 30 days in a year. In addition to the local service engagement, the amended powers will enable Defence Council regulations to be made to protect regulars from being separated from their permanent home base for prolonged periods.

## Clause 2: Consequential amendments

- 22 Subsections (2) to (4) of clause 2 amend sections 9, 9A and 23 of the Juries Act 1974. The current legislation only permits "full time" members of the regular Armed Forces to be automatically excused from jury service, or to be able to have a discretionary deferral. These consequential amendments will ensure that the new part-time regulars will continue to benefit from these protections. The Juries Act 1974 only extends to England and Wales.
- 23 Subsection (5) of clause 2 amends Group C of Part 3 of Schedule 1 to the Law Reform (Miscellaneous Provisions) (Scotland) Act 1980 to make similar provision about excusal as of right from jury service in Scotland.

## Clause 3: Short title, commencement and extent

- 24 Clause 3 will come into force on Royal Assent. Clauses 1 and 2 will come into force on a day appointed by the Secretary of State in regulations which are not subject to parliamentary procedure, and which may make different provision for different purposes.
- 25 Subsections (5) to (8) of clause 3 provide for the territorial extent of the Bill. Clauses 1 and 3 extend to the whole of the UK, the Isle of Man and the British overseas territories, except Gibraltar. Clause 2(1) to (4) extends to England and Wales only. Clause 2(5) extends to Scotland only.
- 26 Subsections (6) and (7) of clause 3 make further provision about the extent of the provisions in the Bill which amend AFA 2006. The changes that the Bill makes to AFA 2006 may be extended by Order in Council to the Channel Islands. If such an Order is made, it can modify those changes (so that the law of the Channel Islands is not the same as that of the United Kingdom). The changes that this Bill makes to the AFA 2006 extend directly (i.e. without the need for an Order in Council) to the Isle of Man, and the British overseas territories (except Gibraltar), but an Order in Council may be made to modify the Act in its application to any of those territories. The provisions applicable to members of the armed forces will apply to them wherever they are in the world.

## Financial implications of the Bill

- 27 The Bill contains no provisions with a direct impact on either public expenditure or taxation.

## Parliamentary approval for financial costs or for charges imposed

- 28 The Bill will not require a money resolution or a ways and means resolution.

# Compatibility with the European Convention on Human Rights

- 29 Section 19 of the Human Rights Act 1998 requires the Minister in charge of a Bill in either House of Parliament to make a statement about the compatibility of the provisions of the Bill with the Convention rights (as defined in section 1 of the Act).
- 30 In the opinion of the Secretary of State for Defence, the provisions of the Bill are compatible with the Convention rights and he has made a statement to that effect.

## Related documents

- 31 The following documents are relevant to the Bill and can be read at the stated locations:
  - The Delegated Powers and Regulatory Reform Committee Memorandum is available at <http://www.parliament.uk/hldelegatedpowers-bills>
  - A detailed policy statement on the secondary legislation associated with this Bill is available at the Flexible Working Bill homepage <https://www.gov.uk/government/collections/armed-forces-flexible-working-bill-2017>
  - The Armed Forces Act 2006 <http://www.legislation.gov.uk/ukpga/2006/52/contents>
  - The Juries Act 1974 [http://www.legislation.gov.uk/ukpga/1974/23/pdfs/ukpga\\_19740023\\_en.pdf](http://www.legislation.gov.uk/ukpga/1974/23/pdfs/ukpga_19740023_en.pdf)

## Annex A - Territorial extent and application in the United Kingdom

No clause of the Bill relates to England and Wales only. Clauses 1 and 3 extend to England and Wales, Scotland and Northern Ireland, the Isle of Man and the British overseas territories, except Gibraltar.

In clause 2, subsections (1) to (4) amend the Juries Act 1974 and are part of the law of England and Wales only. Clause 2(5) amends the Law Reform (Miscellaneous Provisions) (Scotland) Act 1980 and extends to Scotland only.

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Would corresponding provision be within the competence of the National Assembly for Wales?	Would corresponding provision be within the competence of the Scottish Parliament?	Would corresponding provision be within the competence of the Northern Ireland Assembly?	Legislative Consent Motion needed?
Clause 1	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Clause 2	In part	In part	In part	No	N/A	N/A	N/A	No
Clause 3	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No



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