



HOUSE OF LORDS

Delegated Powers and Regulatory Reform
Committee

4th Report of Session 2017–19

**Armed Forces
(Flexible Working)
Bill [HL]:
Government
Response**

Ordered to be printed 11 October 2017 and published 11 October 2017

Published by the Authority of the House of Lords

The Delegated Powers and Regulatory Reform Committee

The Committee is appointed by the House of Lords each session and has the following terms of reference:

- (i) To report whether the provisions of any bill inappropriately delegate legislative power, or whether they subject the exercise of legislative power to an inappropriate degree of parliamentary scrutiny;
- (ii) To report on documents and draft orders laid before Parliament under or by virtue of:
 - (a) sections 14 and 18 of the Legislative and Regulatory Reform Act 2006,
 - (b) section 7(2) or section 19 of the Localism Act 2011, or
 - (c) section 5E(2) of the Fire and Rescue Services Act 2004;

and to perform, in respect of such draft orders, and in respect of subordinate provisions orders made or proposed to be made under the Regulatory Reform Act 2001, the functions performed in respect of other instruments and draft instruments by the Joint Committee on Statutory Instruments; and

- (iii) To report on documents and draft orders laid before Parliament under or by virtue of:
 - (a) section 85 of the Northern Ireland Act 1998,
 - (b) section 17 of the Local Government Act 1999,
 - (c) section 9 of the Local Government Act 2000,
 - (d) section 98 of the Local Government Act 2003, or
 - (e) section 102 of the Local Transport Act 2008.

Membership

The members of the Delegated Powers and Regulatory Reform Committee are:

Lord Blencathra (Chairman)	Lord Moynihan
Baroness Dean of Thornton-le-Fylde	Lord Rowlands
Lord Flight	Lord Thomas of Gresford
Lord Jones	Lord Thurlow
Lord Lisvane	Lord Tyler

Registered Interests

Committee Members' registered interests may be examined in the online Register of Lords' Interests at www.publications.parliament.uk/pa/ld/ldreg.htm. The Register may also be inspected in the Parliamentary Archives.

Publications

The Committee's reports are published by Order of the House in hard copy and on the internet at www.parliament.uk/hldprcpublications.

General Information

General information about the House of Lords and its Committees, including guidance to witnesses, details of current inquiries and forthcoming meetings is on the internet at <http://www.parliament.uk/business/lords/>.

Contacts for the Delegated Powers and Regulatory Reform Committee

Any query about the Committee or its work should be directed to the Clerk of Delegated Legislation, Legislation Office, House of Lords, London, SW1A 0PW. The telephone number is 020 7219 3103 and the fax number is 020 7219 2571. The Committee's email address is hldelatedpowers@parliament.uk.

Historical Note

In February 1992, the Select Committee on the Committee work of the House, under the chairmanship of Earl Jellicoe, noted that "in recent years there has been considerable disquiet over the problem of wide and sometimes ill-defined order-making powers which give Ministers unlimited discretion" (Session 1991–92, HL Paper 35-I, paragraph 133). The Committee recommended the establishment of a delegated powers scrutiny committee which would, it suggested, "be well suited to the revising function of the House". As a result, the Select Committee on the Scrutiny of Delegated Powers was appointed experimentally in the following session. It was established as a sessional committee from the beginning of Session 1994–95. The Committee also has responsibility for scrutinising legislative reform orders under the Legislative and Regulatory Reform Act 2006 and certain instruments made under other Acts specified in the Committee's terms of reference.

Fourth Report

ARMED FORCES (FLEXIBLE WORKING) BILL [HL]: GOVERNMENT RESPONSE

1. We considered this Bill in our 1st Report of this Session.¹ The Government have now responded by way of a letter from Rt Hon. Earl Howe PC, Minister of State for Defence at the Ministry of Defence, printed at Appendix 1.

¹ Delegated Powers and Regulatory Reform Committee, (1st Report, Session 2017–19, [HL Paper 10](#))

APPENDIX 1: ARMED FORCES (FLEXIBLE WORKING) BILL [HL]: GOVERNMENT RESPONSE

Letter from Rt Hon. Earl Howe PC, Minister of State for Defence at the Ministry of Defence, to Baroness Fookes, Chairman of the Delegated Powers and Regulatory Reform Committee

Thank you for the Delegated Powers and Regulatory Reform Committee's 1st Report that was published on 13 July 2017, and paragraphs 1 to 10 of which concern the Armed Forces (Flexible Working) Bill.

I note the Committee's comments about the memorandum and that it does not explain why the new provision inserted by the Bill is expressed in different terms to that for section 329(2) of the Armed Forces Act 2006, which contains a similar exception. While the 2006 Act allows the current regulations to require a person whose service is restricted to a particular area to serve outside that area on a prescribed number of days in a year, the new provision inserted by the Bill refers to the regulations being able to require a person to serve outside their geographic restriction on a number of occasions not exceeding a prescribed maximum.

The Bill will provide for a significant change to the way regular service operates for the Armed Forces. There is no intention at present to enable part-time service or geographically restricted service for all enlisted regulars - this would be detrimental to operational capability. The new arrangements for flexible working are intended to operate for an assignment or a tour length, which is usually around three years. The Services remain engaged in designing the detail of the policy to ensure a practicable approach both for the Services and for those individuals who take up the new arrangements. Some flexibility was therefore necessary when drafting section 329(2)(j) in case the approach of limiting by days proves impracticable once the policy is implemented. Our view is that the *vires* in the amended section 329(2)(j) is wide enough to enable regulations to be made for all possibilities.

I am considering carefully the Committee's view, that the Bill will confer novel and broad powers on the Defence Council to make provision for part-time service and geographic restrictions without any detailed provisions on the face of the Bill limiting or restricting how the powers are exercised, and that these new regulations should therefore be subject to the affirmative procedure. I propose to update the house at Report.

11 September 2017

APPENDIX 2: MEMBERS INTERESTS

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