

# PARLIAMENTARY DEBATES

HOUSE OF COMMONS  
OFFICIAL REPORT

Seventh Delegated Legislation Committee

DRAFT ARMED FORCES (TERMS OF SERVICE)  
(AMENDMENTS RELATING TO FLEXIBLE  
WORKING) REGULATIONS 2018

*Wednesday 17 October 2018*

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**The Committee consisted of the following Members:**

*Chair:* ANDREW ROSINDELL

- |  |  |
|--|--|
| † Docherty, Leo ( <i>Aldershot</i> ) (Con)   | † Jones, Andrew ( <i>Harrogate and Knaresborough</i> ) (Con) |
| † Docherty-Hughes, Martin ( <i>West Dunbartonshire</i> ) (SNP)                     | † Jones, Gerald ( <i>Merthyr Tydfil and Rhymney</i> ) (Lab)  |
| † Duguid, David ( <i>Banff and Buchan</i> ) (Con)                                  | † Kinnock, Stephen ( <i>Aberavon</i> ) (Lab)                 |
| † Ellwood, Mr Tobias ( <i>Parliamentary Under-Secretary of State for Defence</i> ) | † Morton, Wendy ( <i>Aldridge-Brownhills</i> ) (Con)         |
| † Fabricant, Michael ( <i>Lichfield</i> ) (Con)                                    | Nandy, Lisa ( <i>Wigan</i> ) (Lab)                           |
| † Gaffney, Hugh ( <i>Coatbridge, Chryston and Bellshill</i> ) (Lab)                | † Smith, Jeff ( <i>Manchester, Withington</i> ) (Lab)        |
| † Harrison, Trudy ( <i>Copeland</i> ) (Con)  | Snell, Gareth ( <i>Stoke-on-Trent Central</i> ) (Lab/Co-op)  |
| † Hoare, Simon ( <i>North Dorset</i> ) (Con)                                       | † Twist, Liz ( <i>Blaydon</i> ) (Lab)                        |
| † Jenkens, Andrea ( <i>Morley and Outwood</i> ) (Con)                              | Jack Dent, <i>Committee Clerk</i>                            |
|  | † <b>attended the Committee</b>                              |

# Seventh Delegated Legislation Committee

Wednesday 17 October 2018

[ANDREW ROSINDELL *in the Chair*]

## Draft Armed Forces (Terms of Service) (Amendments Relating to Flexible Working) Regulations 2018

2.30 pm

**The Parliamentary Under-Secretary of State for Defence (Mr Tobias Ellwood):** I beg to move,

That the Committee has considered the draft Armed Forces (Terms of Service) (Amendments Relating to Flexible Working) Regulations 2018.

It is a pleasure to work under your chairmanship this afternoon, Mr Rosindell. I am impressed by the tier-1 calibre of MPs who have decided to join us to discuss this draft statutory instrument, which we have an hour and a half to debate in full.

I know that colleagues will have read the terms of service regulations, which are core to what we are discussing. The draft statutory instrument will make consequential changes to those regulations for regular personnel in the Royal Navy, the Royal Marines, the Army and the Royal Air Force. The changes are necessary to enable the Ministry of Defence to operate and manage part-time and restricted separation service, described collectively as flexible service, from 1 April 2019.

Hon. Members will recall that in February this year the Armed Forces (Flexible Working) Act 2018 became law, an historic common-sense step that will help to modernise the terms of engagement that we offer our people in the future.

**Michael Fabricant (Lichfield) (Con):** Will the Minister give way?

**Mr Ellwood:** So early in proceedings—I would be delighted.

**Michael Fabricant:** I am grateful to my right hon. Friend. He might come on to this later, but my only concern with that flexibility is whether it will affect the readiness of the armed forces. I also wonder to what degree other countries have adopted similar practices.

**Mr Ellwood:** My hon. Friend is right. I will come on to that in detail, because it goes to the heart of our continuing to have a fighting capability while meeting the needs of modern society and the expectations of those people who join the armed forces in this day and age.

I am grateful that we had a lively and interesting debate in the lead up to Royal Assent in February. I was particularly pleased to note the overwhelming support for the concept of flexible service.

**Michael Fabricant:** I had a second part to my question about which other countries, if any, have adopted this practice.

**Mr Ellwood:** It is interesting that my hon. Friend mentions that. Australia and New Zealand have different models, and we are sharing our thoughts with other NATO nations. Clearly, this is a recognised step forward in the offering armed forces provide across the world, certainly as regards our allies. I expect a third intervention—but I shall continue.

I also noted during passage of the Act, and certainly during the debate in the House of Lords, that there was an understandable interest in the detail behind the main policy headlines, to examine whether the engine room driving such fundamental changes is fit for purpose. We have worked hard to design a system that will ensure that flexible service operates legally, fairly and efficiently, both for our people and their families who will benefit from the new opportunities and, importantly, for the chain of command who will manage them while continuing to deliver operational capability.

The Government are alive to the desire expressed in this House and the other place to scrutinise the fine detail that will enable flexible service to operate. That is why we have agreed that this important piece of secondary legislation, which we hope to introduce today, should be subject to the affirmative procedure.

Although the changes introduced by the statutory instrument will usher in new, modern opportunities for our people, they are already standard in the wider world of work. We have worked closely with the armed forces to ensure that they are balanced with the need to protect the armed forces' ability to deliver operational capability—the point made by my hon. Friend. To be clear, that must be a red line for defence. I hope that my statement and our debate will demonstrate how people in the Ministry of Defence have appropriately balanced the overriding need to maintain the operational capability of our armed forces with the need to support those who deliver it, and their families, through opportunities for flexible service.

The regulations enable regular service personnel to serve part time and to restrict the number of days they can be required to serve away from their home base to 35 in any 12-month period. They set out the overall time limits for periods of flexible service and the application process, which is designed to be fair and efficient, enable service personnel to apply voluntarily for flexible service and empower the service to consider applications. However, they do not guarantee that any application will be successful. In addition, they outline the actions required by each party during the application process. Importantly, the process is designed to ensure that service personnel cannot have flexible service terms imposed on them.

There may be occasions when, a flexible service arrangement having been agreed, circumstances require changes to be made to it, either permanently or for a specific period. We have therefore set out the conditions under which a flexible service arrangement may be varied, suspended or terminated. In the interests of national security, we conclude that, in extremis, it is essential for services to be able to recall personnel to their full-time duties immediately, through either permanent termination or temporary suspension of the flexible

service arrangement. However, that power will be used only sparingly, and only when a 90-day notice period would have an unacceptable impact. Individuals will also be able to terminate their arrangement with 90 days' notice, or apply to suspend or vary it.

We want to give service personnel as much certainty as possible about any flexible service arrangement they enter into, because they would not apply if they felt the arrangement was likely to be cancelled without warning or explanation. However, we are clear that that must be balanced with service need above all else. We recognise that service personnel may not always get the outcome they hoped for when applying for flexible service. We therefore judged that it was right and fair to make provision for an appeals process. However, the scope of any appeal will be limited to the serviceperson requesting that the appeals authority reconsiders the decision they are unhappy with. Service personnel will be limited to one appeal against a decision. Outside that process, they will retain normal access to the service complaints system.

Hon. Members will note that the working detail beneath the main headlines I have outlined ensures that we will achieve our main policy aim of being fair and honest with those who work for us. We aim to give people access to new, modern flexible service opportunities, while recognising that we must maintain operational effectiveness, which is paramount.

Approving these changes will send a powerful signal to all our brave, loyal and dedicated armed forces and their families that we are on their side. It will be a major step in the journey towards the introduction of flexible service on 1 April 2019. As well as achieving their primary purpose of making changes to the armed forces terms of service regulations, these regulations will enable the finalisation of important related activities, including: the amendment of subordinate armed forces regulations, such as Queen's regulations; the publication of a suite of policy guidance material for those who consider applying for flexible service and those who administer it; and the continuation of our comprehensive communications campaign, which will promote and explain flexible service but also manage expectations and not oversell it.

**Leo Docherty** (Aldershot) (Con): Will the Minister confirm that it is the Department's expectation that these changes will improve retention? They will, for example, allow a soldier who may have seen operational service to agree a working structure when he is not required for operational soldiering that allows him to do the school run on a Monday, thereby easing pressure on his domestic life.

**Mr Ellwood:** I pay tribute to my hon. Friend for his service. He comes here with experience and he will know from the people that he has worked with that personal circumstances change as people serve in the armed forces. They get married and have kids, and extra pressures arise, which may place additional, personal demands on them. Families federations get the feedback that what would help would be to have this valve to allow a bit of time and give some certainty about what is going to happen over a short period, because something has happened in their life—if they want to study or they have a child, for instance. It will support retention, which is critical for our armed forces.

I can confirm that all the activity I have just outlined, together with the consequential changes to the armed forces pension scheme, the compensation scheme legislation and the changes we need to make to our IT systems to enable flexible service to operate, are all firmly on track for delivery in time for the 1 April 2019 launch.

Hon. Members have already demonstrated their overwhelming support for the concept of flexible service, which I hope will be echoed today. I certainly hope that we can crystallise that support by approving the details that will make flexible service a welcome reality for our armed forces, who are renowned around the world for their professionalism, leadership and discipline. I hope that hon. Members will be satisfied and will be inclined to support this statutory instrument.

2.41 pm

**Gerald Jones** (Merthyr Tydfil and Rhymney) (Lab): It is a pleasure to serve under your chairmanship, Mr Rosindell. We all owe a huge debt of gratitude to those who serve in our armed forces and that debt should be at the forefront of our minds, with Remembrance Sunday just a few weeks away. The national commemorations will be especially poignant this year, as we mark the centenary of the end of the first world war and of the Armistice in 1918.

As the Minister mentioned, this is the first time we have met in Committee to consider regulations made under the Armed Forces (Flexible Working) Act. The Opposition support the regulations as they essentially implement the core principle of the Act: that personnel should have the right to request flexible working. We supported the Act when it came before the House, because we want our armed forces to have greater control and flexibility over how they serve and we want to enable the forces to draw from the widest possible pool of talent when recruiting servicemen and women.

We all recognise that the complexities of modern life mean managing work and home responsibilities, as has been mentioned. This is even more the case for members of armed forces, who are expected to deploy or relocate at a moment's notice. The flexibility that the Act affords must be balanced against the overriding priority, which is to retain armed forces that stand ready to defend our country. To that end there are limits on the amounts of flexible working that personnel can undertake. The Minister has set out some of those limits—perhaps he can go further and talk about how they were arrived at.

The regulations enable personnel to apply for flexible service, but as I understand it there is no guarantee that this will be granted. Can the Minister outline what would happen if an application is refused and what process exists for personnel to appeal a decision?

The Minister will recall that during the passage of the Act, we on the Opposition Benches put forward amendments that would compel the Department to publish the number of personnel who are serving part time in the quarterly service personnel statistics and in the biannual diversity statistics. In the other place, the Minister's colleague, Earl Howe, stated that the Department would use data collected about the number of personnel requesting flexible working, but only internally "for analysis purposes." Can the Minister set out why this data will not be published in the usual way along with the standard releases of statistics from the Department?

[Gerald Jones]

Surely this would be a straightforward and cost-free way of assessing how the policy is operating, as the information is collected anyway.

We know that one of the foremost reasons for introducing the Armed Forces (Flexible Working) Act and these regulations was to improve the rates of recruitment and retention. That is certainly a very important aim, given that the number of fully trained personnel continues to fall across each of the services. In fact, the full-time trade-trained strength of the Army has fallen by more than 1,000 since this time last year. The Public Accounts Committee recently reported that the Government's recruitment plans are

“not sustainable in the long-term.”

In the light of the draft regulations, will the Minister set out how his Department plans to remedy that crisis in recruitment and retention?

The number of personnel serving is measured against the strategic defence and security review targets for 2020—namely, an Army of 82,000, an Air Force of 31,750 and a Royal Marines and Royal Navy numbering 30,450 personnel. Clearly, we are some way from meeting those targets. It is difficult to see how they can be met on the current trajectory, even with the draft regulations. Will the Minister confirm that those targets will not be changed as part of the modernising defence programme?

2.46 pm

**Martin Docherty-Hughes** (West Dunbartonshire) (SNP): It is good to see you in the Chair, Mr Rosindell. I welcome the draft regulations, and I do not think there will be any disagreement about their approval.

As someone who comes from a forces family—my brother is in the Royal Scots and my nephew has just passed out from the Royal Engineers—I am very aware of how a flexible approach to service can improve not only recruitment but retention, as the hon. Member for Aldershot mentioned. I am also aware of its impact on readiness, which was discussed only a few moments ago.

For those who do not know it, flexible working actually works. One needs to look only across the North sea at the kingdom of Denmark, where it works so well that people find it difficult to leave the armed forces. Not only does Denmark have good recruitment, but the arrangements are so good that people actually want to stay in the armed forces. We have recruitment and retention challenges at the moment, so I am sure everyone welcomes the approach the Minister outlined. We must be clear that it builds on the commitments in the 2015 SDSR, and I hope it is continued in the fast-approaching 2020 SDSR, which is not as far away as everyone thinks.

**Michael Fabricant:** I am slightly confused. Although I very much welcome the hon. Gentleman's positive approach to the draft regulations—I loved his comparison with Denmark, which I know well—I do not see how these changes would work with the Scottish army if Scotland became independent.

**Martin Docherty-Hughes:** The last time I looked, this was the Parliament of the United Kingdom of Great Britain, which has enough problems with retention and

recruitment. One need only come to the meeting of the Select Committee on Defence next door in 10 minutes to find out about the issues with defence recruitment and retention. The Minister himself eloquently discussed those issues in front of that Committee, for which he is to be commended. After independence, I will be more than happy to come and give evidence as a Member of an independent sovereign Parliament at Holyrood.

Before I was sidelined by that diversionary tactic, I was going to say that the draft regulations show a sense of forward thinking from the Minister and his officials. They show how we can make changes to people's quality of life. In the context of the problems with CarillionAmey, housing and so on, this is one area in which we have stepped forward to recognise that flexible working can improve the lives of service personnel, regardless of gender, and those of their families.

It would be ridiculous for me to say we do not still have far to go. For instance, this is the only state in Europe in which serving personnel do not have a contract. It would also be remiss of me not to say that although this is a great step forward, I hope Ministers and other Members will support my private Member's Bill on an armed forces representative body, which would allow our armed forces to speak with one strong voice, when it comes to the Floor of the House in November. However, I congratulate the Minister on bringing forward the draft regulations.

2.49 pm

**Mr Ellwood:** I am grateful for the support from right across the Committee. It is important that our armed forces see Parliament, the Government, the Opposition and so forth all supporting what they do.

I thank the hon. Member for Merthyr Tydfil and Rhymney for his support on the Armed Forces (Flexible Working) Act, and in Committee today. He spoke of the debt of gratitude that we owe to those who are in uniform. I would add to that the debt that we owe to those who are related to those in uniform—the armed forces community. It is this place that votes to send these people into harm's way. It is important that we look after them. Looking after them does not just mean that we do equipment well or train them well. It means that we address the welfare aspects, including housing. It also means understanding that we should give them the flexibility we are discussing here today.

The hon. Gentleman also recognised, quite rightly, that this year is a significant year as we pay tribute to not just those in the armed forces but the generation that stepped forward 100 years ago to defend our values and helped shape our way of life. We are forever grateful for the huge sacrifice that was made.

He talked about the gene pool of talent that we have to recruit from. It is difficult for the armed forces because there is a certain age profile and a level of fitness that has to be expected, and it is competitive in this day and age. We are all aware of the challenges that we face, which is why we must forever compare ourselves with civilian attractions. A flexible service is one example of our being able to illustrate that what someone does in the armed forces is similar to what they might gain on civvy street.

He talked about the appeals process. I touched on the creation of an appeals authority, which would make sure that we carry out proper scrutiny. We do not expect

the take-up to be huge. In Australia, which is operating a similar system, there is about a 1% take-up. We expect between 1,000 and 2,000 people, perhaps, at any one time, to take up this opportunity, which means that it would be prohibitive to provide detailed records. I will promise that when we present the armed forces covenant annual report, we will make clear the progress that has been made and give a full report on the impact of flexible service, including the take-up. That is very important.

I am grateful for the Scottish perspective. The hon. Member for West Dunbartonshire talked about his personal experience and those he knows. It reminded me that society is ever distant from those who serve. As we move forward, there is a disconnection from the direct recognition of what our armed forces do. Fewer and fewer of us have a grandfather or father who served and who can remind us of that bravery. That makes it all the more important that we look after our armed forces, and make it an attractive proposition in comparison with the other opportunities open to 18 to 20-year-olds.

The hon. Gentleman also talked about quality of life. I absolutely agree. It should be made very clear that we in this place talk about the professionalism of our armed forces as among the best in the world not because we have fantastic aeroplanes or tanks or ships and so

forth or because of their training, but because of the value of individuals—the people—and it is the people we must look after. I would underline, as I like to do, that when someone joins the armed forces community, they never leave. At some point, they may retire and pack their uniform up and slide it over to the quartermaster, but they will remain associated with the armed forces in one form or another, and certainly psychologically, so the more that we can do as they serve and as they move into society as veterans, the better that will be.

The hon. Gentleman touched on housing. I know this has been an issue with Annington Homes and others. We are rationalising the real estate. The armed forces owns 2% to 3% of the land in the UK, and we no longer need that land. We are disposing of that to help with housing. With the reconciliation of bases and hubbing in certain locations, we are spending £4 billion over the next 10 years on that upgrade. The process is slower than I would like it to be, but we have to be patient and try to get the accommodation that is expected for our modern fighting armed forces.

*Question put and agreed to.*

2.54 pm

*Committee rose.*

