EXPLANATORY STATEMENT

INSTRUMENT NO 1 OF 1991

ISSUED BY THE AUTHORITY OF THE MINISTER FOR DEFENCE SCIENCE AND PERSONNEL

MILITARY SUPERANNUATION AND BENEFITS TRUST DEED (AMENDMENT)

The Schedule to the Trust Deed made by the Minister for Defence Science and Personnel under section 5 of the Military Superannuation and Benefits Act 1991 ("the MSB Act") contains Rules ("the MSB Rules") which deal with:

a. the contributions to be made by members of the Defence Force who are members of the Military Superannuation and Benefits Scheme ("the MSB scheme") established by the Trust Deed in accordance with section 4 of the MSB Act; and

b. the benefits to be provided to members of the MSB scheme upon retirement or to dependants of deceased members of the scheme.

The Minister is empowered, by subsection 5(1) of the MSB Act, to amend the Trust Deed (including the MSB Rules), by an instrument which, by subsection 49(1) of the MSB Act, is a disallowable instrument for the purposes of section 46A of the Acts Interpretation Act 1901.

The development of administrative procedures and computer programs for the introduction of the MSB scheme has revealed a need for technical changes to the MSB Rules to meet procedural or programming requirements. It has also revealed some unintended effects of the Rules. The amendments make the necessary changes to the Rules.

1. Interpretation

This clause defines expressions used in the Instrument.

2. Amendment

This clause is formal.

3. Rule 2(Definitions and interpretation)

Rule 2 of the MSB Rules contains a list of the definitions set out in Schedule 1 to the Rules. This clause makes changes to the list consequent on amendments to that Schedule which add or delete definitions.

4 Rule 4(Amount of contributions)

Rule 4 of the MSB Rules deals with the election by a member of the amount of his or her contributions.

When a member of the Defence Force Retirement and Death Benefits Scheme ("the DFRDB scheme") elects to transfer to the MSB Scheme, the transfer generally takes effect on the same day (Defence Force Retirement and Death Benefits Act ("the DFRDB Act") s. 134). In most cases, there will be an administrative "flywheel effect" in that at least one salary pay-day will elapse before a member's contributions to the new scheme can be put into effect. This will result in at least one DFRDB
contribution being deducted and paid into consolidated revenue whereas an MSBS contribution should have been deducted and paid into the Military Superannuation and Benefits Fund ("the MSB Fund").

As some tens of thousands of members are expected to transfer to the new scheme, administrative action to reverse this situation would involve a multiplicity of small transactions and adjustments which would require considerable administrative effort and resultant cost. To avoid this, various amendments to the Rules treat any such DFRDB contributions as MSBS contributions. The amendments leave a member's contributions in consolidated revenue but give the member a credit in the MSB scheme of the relevant member contributions and employer contributions and accrued interest.

This clause inserts a new subrule (1A) which treats the amount of any such DFRDB contribution as being the amount of MSBS contribution required to be paid by the member. Consequential amendments are made to rules 9, 10 and 15 and Schedules 1 and 8.

5. Rule 6(Contributions while on leave without pay in connection with birth of child etc.)

Rule 6 of the MSB Rules allows a member who is on "unpaid maternity leave" or "unpaid paternity leave" to elect to continue to pay contributions for a period not exceeding 9 months. It is desirable that a member not have an indefinite period within which to make such an election and this clause requires the member to make the election before the period of 9 months expires.

6. Rule 7(Contributions while on other leave without pay)

Rule 7 of the MSB Rules deals with the circumstances in which a member who is on leave without pay may elect to continue to pay contributions for a period. It is desirable that a member not have an indefinite period within which to make such an election and this clause inserts a new subrule (3A) which requires the member to make the election before the period of leave without pay expires.

7. Rule 8(General conditions applicable to contributions under rules 6 and 7)

Rule 8 of the MSB Rules is a machinery provision containing general provisions relating to contributions made by members under rules 6 and 7 of the Rules and includes a provision that a member may revoke an election under those rules after 3 months. This clause adds a new subrule (3) which specifies the salary fortnight from which such a revocation takes effect.

8. Rule 9(Member contributions to be paid to Board)

Rule 9 of the MSB Rules requires a member's contributions to be paid to the Board of Trustees of the scheme ("the Board"). This clause is consequent on the amendment to rule 4 and adds a new subrule (2) which requires an interim salary fortnight contribution (defined by an amendment to Schedule 1 to mean a contribution, the rate of which is governed by new subrule 4(1A)) to be paid to the Commonwealth. As described in the explanation to clause 3, this is what will happen to these particular contributions because of the flywheel effect there referred to.

9. Rule 10(Liability of Department to pay employer contributions)

Rule 10 of the MSB Rules requires the Department to pay an employer contribution to the Board whenever a member pays contributions, subject to certain exceptions in cases of leave without pay. This clause inserts a new subrule (1A) which provides
that the Department is not required to pay an employer contribution in relation to an interim salary fortnight contribution (because a member benefit will not have been paid into the MSB Fund). There is no financial difference to the member, who is provided with a notional element of the employer benefit by an amendment to Schedule 8 to the Rules and a notional element of the employer benefit by Schedule 9.

10. Rule 14(Benefits on retirement on or after attaining age of 55 years)

Rule 14 of the MSB Rules provides that the benefit applicable to a member on retirement on or after age 55 is in the form of a preserved benefit. Rules 49 and 52 of the Rules allow the person to access the benefit. For simplicity of administration, it would be preferable for the preserved benefit not to be created as such unless the member elects to preserve the benefit in the MSB Fund. This clause replaces rule 14 with a rule which provides accordingly.

Subrule (1) provides that the member benefit and the employer benefit are payable as a lump sum.

Subrule (2) allows the member to preserve his or her member benefit in the MSB Fund.

Subrule (3) allows the member to similarly preserve his or her employer benefit, to convert it into a pension or to have part-pension and part-preserved benefit.

Subrule (4) provides that the pension or part-pension options are not available to a person whose employer benefit is less than the prescribed minimum, which new rule 65B provides is the minimum amount to which the preservation standards set out in the Occupational Superannuation Standards Regulations apply. This amount is currently $500 - see regulation 12 of those Regulations. The purpose of this provision is to require the member to take the benefit as a lump sum, in order to avoid the expense of paying pensions of insignificant amounts.

11. Rule 15(Payment of benefits where rule 12, 13 or 14 applies and person has less than 12 months' eligible service)

Rule 15 of the MSB Rules makes special provision for persons who resign, etc, with less than 12 months' eligible service and whose benefits are correspondingly small. The rule is designed to have the effect of limiting the number of insignificant benefits which the Board would otherwise be required to administer.

As drafted, rule 15 applies only to retirements referred to in rule 12, ie, before reaching retiring age or age 55 (exclusive of invalidity retirement, retrenchment or redundancy). Although not likely to be common, it is possible for persons to retire under rules 13 or 14 with less than 12 months' service and subclause 11.1 of this clause applies rule 15 to these cases also.

Rule 15 is expressed to apply only in cases where the employer benefit consists wholly of funded employer benefit, which is defined in Schedule 1 to mean the 3% productivity benefit paid into the MSB Fund plus interest. In the case of members who transfer from the DFRDB scheme, the 3% productivity benefit (and interest thereon) accrued before transfer is unfunded.

Subclause 11.2 inserts a definition which includes these unfunded amounts in the expression "funded employer benefit", in rule 15 only.

The amendments made to rules 4 and 10 introduce another unfunded element of employer benefit and paragraph (b) of the definition includes these unfunded amounts in the expression "funded employer benefit".
12. Rule 16 (Limitation on certain benefits in case of certain transferees who retire before completing 731 days’ service after 30 September 1991.)

Rule 16 of the MSB Rules acts as a restraining mechanism on the resignation of members during the first 2 years after transferring from the DFRDB scheme. It provides that a transferee who resigns during that period incurs a proportionate reduction in the notional interest element of his or her lump sum member benefit. By way of the definition of "relevant provisions" in subrule (3), the rule reduces the amounts of notional interest accrued before and after transfer whereas it should affect only the interest accrued before transfer. Other corrections need to be made. This clause replaces rule 16 with a rule which provides accordingly.

Subrule (1) provides that a transferee who retires during the 2-year period (otherwise than on reaching retiring age or on the ground of invalidity, retrenchment or redundancy) will incur a proportionate reduction in the notional interest element of his or her member benefit. The subrule has been redrafted for more ready comprehension and the existing subrule (4) is omitted, the definition of "contributory service" being transferred to the glossary in Schedule 1, and the definition of "relevant provisions", which rather unkindly referred the reader to two other provisions of the Rules, being dispensed with.

Subrule (2) is new and deals with the case of a person who on transfer to the MSB scheme is in debt to the Commonwealth in respect of service being repurchased, etc. Since, under new section 138 of the DFRDB Act, these debts cannot be carried forward into the new scheme, the debt is offset against the person's notional member benefit. If the member benefit is subsequently reduced by the application of the formula in subrule 16(1), the member benefit may become a negative amount.

Subrule (2) provides that, in that case, the person is liable to pay to the Commonwealth the amount of the difference.

Subrule (3) is the existing subrule (2) amended to insert a missing reference to rule 34.

13. Rule 18 (Membership of Committee)

Rule 17 of the MSB Rules requires the Board to establish an Incapacity Classification Committee to classify and reclassify invalidity retirees as to their degree of incapacity for the purposes of invalidity pensions. Subrule 18(2) provides for the Board to determine the qualifications of members of the Committee. The expression "qualifications" is too limiting: it may be desirable to specify some other requirement; for example, that the person holds an acting appointment as trustee under clause 6 of the Trust Deed.

This clause amends rule 18 to widen the criteria for these appointments.

Subrule (2) includes provision for some "other requirement" to be determined.

Subrule (3) is new and provides for a person's appointment to terminate automatically if the person ceases to hold the qualifications or comply with the other requirement, as the case may be.

14. Rule 23 (Reclassification in respect of incapacity)

Rule 23 of the MSB Rules empowers the Board or an Invalidity Classification Committee to review the invalidity classification of an invalidity pensioner or former invalidity pensioner and thus allows account to be taken of any improvement or deterioration in the person's incapacity for civil employment.
This clause inserts a new subrule (8A) which excludes from reassessment a person who is classified as Class C (i.e., not appreciably handicapped for ordinary employment) and who accessed the whole of his or her employer benefit, that is, he or she has either been paid the whole of his or her employer benefit or has elected to convert the benefit into a pension or part pension and has been paid the balance.

15. Rule 29 (Effect of change of invalidity classification on pension and preserved benefit)

Rule 29 of the MSB Rules deals with the cancellation of a person's invalidity pension if the person's invalidity classification is reduced from Class A or B to C, and the restitution of the person's pension if the person's classification is raised. While the person was Class C, the person could in certain circumstances access his or her employer benefit. This clause adds a new subrule (3) so that where the person accesses the employer benefit in whole or in part and the person is subsequently reclassified, the Board may make an appropriate reduction to the employer benefit. In making the reduction, the Board is required to have regard to the amount of employer benefit paid.

16. Rule 30 (Person may be treated as having been retired on ground of invalidity)

Rule 30 of the MSB Rules deals with the case of a person who was retired otherwise than on the ground of invalidity and it is subsequently discovered that a medical condition existed which could have justified the person being retired on the ground of invalidity. The rule empowers the Board to treat the person as having been retired on the ground of invalidity.

This clause adds a new subrule (3) which excludes a person from the benefit provided by the rule if the person has accessed the whole of his or her employer benefit.

17. Rule 32 (Pre-existing condition)

Rule 32 of the MSB Rules disqualifies a person for invalidity benefits where the person is retired within 2 years of entry because of a medical condition which pre-dated the person's entry into the Defence Force. The DFRDB Act (s.28(1)) prescribes a period of 1 year. It is considered equitable that the 1-year period should continue to apply to a person who transfers from the DFRDB scheme.

This clause amends subrule (1) and inserts new subrules (1A) and (3) to achieve this effect.

The amendment to paragraph (1)(a) excludes transferred persons from subrule (1).

New subrule (1A) makes provision similar to subrule (1) but applies only to a transferred member and provides a 1-year period. New subrule (3) defines an expression used in new subrule (1A).

18. Rule 36 (Cancellation of pension etc. of invalidity retiree)

Rule 36 of the MSB Rules is a machinery provision which operates automatically to change certain matters upon the re-employment of an invalidity retiree. The rule cancels the person's invalidity classification and invalidity pension (if any) but fails to provide the person with a preserved benefit in place of the cancelled pension. This clause makes provision for the preserved benefit.
19. Rule 40 (Payment of deceased member's employer benefit)

Rule 40 of the MSB Rules provides for the disposal of the employer benefit of a serving member who dies. Subrule (2) provides a pension option for the spouse and subrule (3) provides for the lump sum or pension to be calculated at the higher (invalidity) rate. Subrule (4) provides that the advantages provided by subrules (2 and (3) do not apply in the case of a member who dies while absent without leave for a period exceeding 21 days, unless the Board decides that there are mitigating circumstances. The options which apply to a surviving spouse should be the same as those which apply under rule 54 to the spouse of member who resigned with a preserved benefit and who dies before that benefit became payable.

This clause provides a pension option to a surviving spouse of a serving member who dies, by omitting from subrule (4) the reference to subrule (2).

20. Rule 43 (Final benefit payable in relation to deceased retirement pensioner)

Rule 43 of the MSB Rules deals with the case where a retirement pensioner and his or her eligible dependants die within 10 years after his or her pension became payable.

Subrule (1) deals with the case of a pensioner who is not survived by eligible dependants and provides for payment of a lump sum amount to the deceased's personal representative. For consistency with other rules the option of payment to a nominated dependant should be provided.

Subrule (2) deals with the case where a deceased retirement pensioner is survived by a spouse or eligible child. However rule 48 enables the residual capital value of the employer benefit to be paid out where the surviving dependant is a child and there is no need for subrule (2) to also apply to this situation.

The rule also provides, in the case of a non-invalidity pensioner, that there is payable to the personal representative of the deceased pensioner or deceased dependant, as the case may be, the amount of the residual funded employer benefit, less the amount of pension paid. This should not apply where the member elected to take part pension and part lump sum and did not convert the funded portion to pension.

This clause replaces rule 43 with a rule which incorporates the necessary changes.

Subrule (1) deals with the case of a pensioner who dies without eligible dependants not later than 10 years after his or pension became payable and provides for payment of the amount (if any) by which the person's employer benefit exceeds the amount of pension paid to the person:

a. to a beneficiary under the deceased person's will (providing the deceased person had notified the Board of these facts); or

b. to the deceased person's personal representative.

Subrule (2) deals with the case of a pensioner who dies leaving an eligible spouse who also dies not later than 10 years after the pensioner's pension became payable and provides for payment, to the deceased spouse's personal representative, of the amount (if any) by which the person's employer benefit exceeds the amount of pensions paid to the person and the spouse.

Subrule (3) provides that the 10-year period is exclusive of periods during which the relevant pension was not payable.
Subrule (4) excludes the operation of rule 43 where the deceased pensioner elected not to have his or her funded employer benefit included in the employer benefit that was converted into his or her pension.

21. Rule 48(Payment of balance of benefit where pension becomes payable to child in certain cases)

When a member or a pensioner has died and a child or children are the only remaining persons who are entitled to benefits, rule 48 of the MSB Rules allows the residue of the deceased person's employer benefit, after allowing for the capital value of the pension payable to the child or children, to be paid to the appropriate beneficiaries, instead of waiting until the last child ceases to be entitled to a pension.

The rule applies in relation to the child of a serving member who dies (subrule (1)), the child of a deceased non-invalidity retirement pensioner (subrule (2)) and the child of a deceased invalidity pensioner (subrule (3)), but fails to make provision in relation to certain other children.

This clause inserts subrule (3A), which applies where the child's pension becomes payable on the death of the spouse, and subrule (3B), which applies where the child's pension becomes payable on the death of a non-pensioner with a preserved benefit.

22. Rule 51(Payment of employer benefit included in preserved benefit to person who has attained 55 years of age)

Rule 51 of the MSB Rules permits the payment of an employer benefit as a lump sum, before the person attains the age of 55 years, in special circumstances including permanent unfitness for employment or where the Insurance and Superannuation Commissioner approves payment of the benefit. The rules applicable to the Public Service Superannuation scheme provide a pension or part-pension option in these circumstances.

This clause adds a new subrule (2) which provides a similar option.

The clause also adds a new subrule (3) which provides that the pension or part-pension options are not available to a person whose employer benefit is less than the prescribed minimum, which new rule 65B provides is the minimum amount to which the preservation standards set out in the Occupational Superannuation Standards Regulations apply. This amount is currently $500 - see regulation 12 of those Regulations. The purpose of this provision is to avoid the expense of paying pensions of insignificant amounts.

23. Rule 52(Payment of employer benefit included in preserved benefit to person who has attained 55 years of age)

Rule 52 of the MSB Rules provides a person with access to the employer benefit included in a preserved benefit on or after attaining 55 years of age. An effect of the rule as drafted is that, if the person elects to have the employer benefit or part of it converted into a pension, the member benefit cannot be left in the MSB Fund. It is considered that this requirement is unnecessary.

This clause replaces rule 52 with a rule which omits this requirement.

Subrule (1) provides a person with access to the employer benefit included in a preserved benefit on or after attaining 55 years of age. The person has the option of:

a. having the employer benefit paid as a lump sum; or
b. being paid a full pension; or

c. being paid a pension (not less than 50% of the employer benefit and the balance of the benefit being paid as a lump sum.

Subrule (2) provides that the pension or part-pension options are not available to a person whose employer benefit is less than the prescribed minimum, which new rule 65B provides is the minimum amount to which the preservation standards set out in the Occupational Superannuation Standards Regulations apply. This amount is currently $500 - see regulation 12 of those Regulations. The purpose of this provision is to avoid the expense of paying pensions of insignificant amounts.

24. Rule 53(Compulsory payment of preserved benefit)

Rule 53 of the MSB Rules requires the balance of any preserved benefit to be paid out upon a person attaining 65 years of age.

This clause adds subrule (2) which also requires a preserved benefit to be paid out if it consists wholly of a member benefit to which the preservation standards set out in the Occupational Superannuation Standards Regulations do not apply. This amount is currently $500 - see regulation 12 of those Regulations.

25. New rule 53A Payment of deceased retirement pensioner's member benefit included in preserved benefit

Rule 54 of the MSB Rules makes provision for (inter alia) payment of the preserved member benefit of a former non-pensioner member who dies. Payment is made to the person's eligible dependants or personal representative. A similar requirement exists with regard to a retirement pensioner who, at death, had a preserved member benefit.

This clause inserts a new rule 53A which makes provision accordingly.

The rule provides that, upon the death of a retirement pensioner, his or her member benefit included in a preserved benefit is to be disposed of as follows:

a. if there is a spouse, with or without children: to the spouse; or

b. if there is an eligible child or children but no spouse: to the eligible child or children; or

c. a dependant who is a beneficiary under the deceased person's will (providing the deceased person had notified the Board of these facts); or

d. to the deceased person's personal representative.

26. New rule 54A(Aggregation of benefits)

A person who has more than 1 period of service may have more than one preserved benefit, more than one employer benefit, etc. Administratively it will be more satisfactory if preserved benefits are aggregated; similarly with employer benefits, etc.

This clause inserts a new rule 54A which provides for aggregation. Subrule (1) deals with a person who has an employer benefit and a preserved benefit, and subrule (2) deals with a person who has 2 or more preserved benefits.
27. Rule 55 (Increases in maximum benefit limits)

Rule 55 of the MSB Rules makes provision for the maximum benefit limits to be updated annually in line with increases in average weekly ordinary time earnings.

This clause amends subrule (1) consequent on amendments of Schedule 3 contained in this instrument.

28. New rules 65A and 65B

A matter not covered by the MSB Rules is the destination of the funded portion of a person's employer benefit where the benefit is split between a pension and a lump sum. There is usually a more favourable taxation outcome for a person if the funded portion is included in the pension.

65A Employer benefit converted into pension to include funded employer benefit unless person elects otherwise

This clause inserts a new rule 65A which provides for the funded portion to be included in the pension unless the person elects otherwise.

65B Prescribed minimum amount for conversion of lump sum to pension

The clause also inserts a new rule 65B which prescribes a minimum amount for the purposes of rules 14(4), 51(2) and 52(2) - see the explanations regarding the amendments to those rules.

29. Rule 73 (Membership of Committee)

Rule 72 of the MSB Rules requires the Board to establish a Reconsideration Advisory Committee to hear appeals against decisions made by delegates of the Board. Rule 73 provides for the Board to determine the qualifications or experience required for appointment as member of such a Committee. The Minister for Defence gave an assurance to the Senate that the Rules would be amended to require one member of each such Committee to be a retirement pensioner. Many appeals are expected to relate to retirement pensions.

This clause amends rule 73 accordingly.

The expression "qualifications" is too limiting: it may be desirable to specify some other requirement.

This clause amends rule 73 to widen the criteria for these appointments.

Subrule (2) includes provision for some "other requirement" to be determined.

Subrule (2A) is new and provides for a retirement pensioner to be appointed to each such Committee.

Subrule (2B) is new and provides for a person's appointment to terminate automatically if the person ceases to hold the qualifications or comply with the other requirement, as the case may be.

30. Schedule 1 (GLOSSARY)

Schedule 1 to the Rules defines expressions used in the Rules.
Subclause 30.1 inserts additional definitions consequent on amendments made to the MSB Rules.

"carry over value": this relates to new Schedule 10A.

"contributory service": this is transferred from rule 16.

"interim benefit": this is transferred from paragraphs 3 and 6 of Schedule 8.

"interim salary fortnight contribution": this relates to rules 9, 10 and 15 and Schedule 8.

"transferred (former recipient) person", "transferred (refunded contributions) person" and "1973 Scheme (refunded contributions) re-entrant": these relate to Schedule 8.

Subclauses 30.2 and 30.3 replace the definitions of "child" and "eligible child".

The existing definition of "eligible child" is expressed to relate to a deceased member or deceased retirement pensioner. Under rule 54, benefits are intended to accrue also to the eligible children of deceased former members who are not retirement pensioners and the definition of "eligible child" should be extended accordingly. Furthermore, subparagraph (c)(iii) of the definition properly belongs in the definition of "child".

Subclause 30.4 replaces two definitions relating to 1973 Scheme re-entrants with new definitions which relate to Schedule 8 (as redrafted).

31. Schedule 3(CALCULATION OF MAXIMUM BENEFIT LIMITS)

Schedule 3 to the MSB Rules in effect defines "lump sum maximum benefit limit" and "pension maximum benefit limit", concepts which are used to govern the amount of contributions made by a member - see rule 5.

The maximum benefit limits are based on actuarial calculations which take account of the manner in which the capital value of a pension is assessed by the Occupational Superannuation Standards Regulations. The Rules for the administration of the Public Service superannuation scheme provide flat rate maxima for persons on salaries of less than $25,000. This clause provides similar maxima for the MSB scheme.

32. Schedule 6(CALCULATION OF ELIGIBLE SERVICE)

Schedule 6 to the MSB Rules defines eligible service for the purpose of calculating the employer benefit. Two uncommon cases for which the Schedule should make provision are a re-entered member of the DFRDB scheme with deferred benefits and a re-entered invalidity pensioner of the DFRDB scheme. This clause inserts additional subparagraphs dealing with these cases.

32. Schedule 7(CALCULATION OF FINAL AVERAGE SALARY)

Schedule 7 to the MSB Rules in effect defines "final average salary" which is used in the calculation of a member's employer benefit - see Schedule 8. In most cases, final average salary is one-third of the salary paid to the person over the person's last 3 years of service. Members of the Defence Force are paid fortnightly and it is administratively simpler to calculate the amount of salary paid to a member for a period expressed as a given number of fortnights than a given number of years.
This clause replaces Schedule 7 with a new schedule which replaces the references to 3 years with references to 78 salary pay-days and makes consequential changes. The new schedule also replaces references to "eligible service" with "service" as being administratively simpler and omits paragraph 2 which flowed from the use of "eligible service". Paragraph 3 is new and flows from the change to the use of "service": it confines the period of service involved to the person's current period of service.

34. Schedule 8(CALCULATION OF EMPLOYER BENEFIT)

Schedule 8 to the MSB Rules describes how a person's employer benefit is calculated. Some changes to this Schedule have become necessary, including a need to distinguish between classes of transferred members and between classes of re-entrants. As a result, the whole Schedule has been remade.

Part 1 of existing Schedule 8 provides a general rule which applies, with certain exceptions, to persons with not less than 7 years' service and to persons who are invalidity retirees or who transferred from the DFRDB scheme. Part 1 of new Schedule 8 now excludes a transferred (refunded contributions) person.

Part 2 of existing Schedule 8 provides a special rule for certain other persons who retire before completing 7 years' service. Paragraph 3 in Part 2 contains a formula used for this purpose which uses a factor called "FEB" representing the person's funded employer benefit. An element of this is the amount of the 3% productivity benefit plus interest. Interest in respect of the period before 1 October 1991 is described (subparagraph (c)(i) of the definition of "FEB") by reference to rates of interest referred to in Schedule 11: however, for this period interest will accrue under the determination governing the 3% productivity benefit and the only reference required in subparagraph (c) to interest should be that referred to in subsubparagraph (c)(ii).

The definition of "FEB" in paragraph 3 should also contain a reference to the notional employer benefit relating to interim salary fortnight contributions - see the amendments to rule 4.

Paragraph 3 also contains a table which is used in calculating the employer benefit during the first 7 years' service but, as drafted, enables calculations to be made with regard to the first 6 years only. A figure should also be included in each table in respect of the 7th year.

These matters (suitably amended) are dealt with in paragraph 5 of new Schedule 8.

Parts 3 and 4 of existing Schedule 8 make provision corresponding to that in Parts 1 and 2, respectively, but in relation to 1973 Scheme re-entrants, 1991 Scheme re-entrants and foreign service members. These Parts should only apply to those 1973 re-entrants who are refunded contributions members and should, in addition, apply to transferred members who are refunded contributions members. Part 4 fails to mention 1991 Scheme re-entrants. Part 4 also requires amendments similar to those made to Part 2.

Paragraphs 6, 9 and 10 of new Schedule 8 incorporate these amendments.

Part 5 of existing Schedule 8 provides a special rule for members who cease contributions on reaching their lump sum maximum benefit limit of pension maximum benefit limit. This part should not apply to an invalidity retiree and paragraph 11 in new Schedule 8 excludes invalidity retirees from the part.
Paragraph 11 of existing Schedule 8 defines aggregated service for the purposes of the Schedule. It fails to make provision for 1991 Scheme re-entrants and needs to make changes consequent on provision now made in Parts 3 and 4 for transferred (refunded contributions) persons and the amendment made to the definition of "foreign service member". Paragraph 15 in new Schedule 8 makes these changes.

35. Schedule 9(CALCULATION OF MEMBER BENEFIT)

Schedule 9 to the MSB Rules describes how a person's member benefit is calculated.

The member benefit consists of several elements including, in the case of a transferred member, the person's transfer value and notional interest thereon. DFRDB re-entrants with deferred benefits who join the MSB scheme lose those benefits under section 83 of the DFRDB Act without having received any benefit from them. It is accordingly necessary to provide them with an appropriate benefit under the MSB scheme.

This clause adds a new subparagraph to Schedule 9 which provides the person with a carry over value (defined in the Glossary in Schedule 1 by reference to new Schedule 10A) with notional interest.

36. Schedule 10A(CARRY OVER VALUE)

New Schedule 10A describes in detail a "carry over value". This matter is explained above in relation to the amendment to Schedule 9.

37. Schedule 11(RATES OF INTEREST APPLICABLE IN RESPECT OF CERTAIN UNFUNDED AMOUNTS)

Schedule 11 prescribes rates of interest which are applied to notional amounts credited to a transferred person in respect of service as a member of the DFRDB scheme and the earlier DFRB scheme. The schedule describes how these are to be calculated on a fortnightly basis but this is unnecessary because annual rates are to be applied. This clause replaces Schedule 11 with a Schedule which provides accordingly.

38. Other amendments

The Schedule makes drafting amendments and corrections.