

Defence Act 1903

**Determination No 1 of 1993 under Section 52 of the
Defence Act 1903**

I, Gordon Neil BILNEY, the Minister of State for Defence Science and Personnel, hereby make the following Determination under section 52 of the Defence Act 1903

Dated This twenty third day of January 1993

Gordon Bilnev

Minister of State for Defence Science and Personnel

1. Amendment

1.1 The Defence Force (Superannuation)(Productivity Benefit) Determination is amended as set out in this Determination.

2. Commencement

2.1 Clause 12 is taken to have commenced on 1 January 1993

3. Clause 3(Interpretation)

3.1 Subclause (3):
Omit "and clause 5".

4. Clause 5(Minimum qualifying service)

4.1 Omit the clause

5. Clause 6(When benefit payable)

5.1 Subclause (1):
Omit "Subject to clause 5, where", substitute "Where"

6. Clause 8A (Amount of productivity benefit after 1988 and before 1 July 1992)

6.1 Subclause (1):
Add at the end "and before 1 July 1992"

6.2 Subclause (7):
Omit the subclause.

7. New clauses 8AA and 8AB

After clause 8A, insert:

Amount of productivity benefit on or after 1 July 1992

"8AA.(1) This clause applies in respect of service rendered by a member on or after 1 July 1992.

"(2) Where, in a pay period, a member whose total period of effective service is less than 20 years renders 14 days effective service, then, subject to subclause (7), the amount of productivity benefit (exclusive of interest) to be credited to that member in respect of that pay period is calculated using the formula:

$$\frac{14 \times \text{ARP}}{365} \times \frac{\text{Percentage}}{100}$$

where:

ARP is the annual rate of pay applicable to the member; and

Percentage is the number specified in the following table in relation to the period in which the pay period ends:

Period	Percentage
Period ending 31 December 1992	3.6
Period commencing 1 January 1993	4.5

"(3) Where, in a pay period, a member whose total period of effective service is not less than 20 years renders 14 days effective service, then, subject to subclause (7), the amount of productivity benefit (exclusive of interest) to be credited to that member in respect of that pay period is calculated using the formula:

$$\frac{14 \times \text{ARP}}{365} \times \frac{3}{100}$$

where **ARP** is the annual rate of pay applicable to the member.

"(4) Where, in a pay period, a member renders a period of effective service of less than 14 days, then, subject to subclause (7), the amount of productivity benefit (exclusive of interest) to be credited to that member in respect of that pay period is calculated in accordance with the formula:

$$\frac{\text{B} \times \text{D}}{14}$$

where:

B is the amount of benefit in respect of a member in respect of the pay period ascertained using the formula in subclause (2) or (3) as the case may be; and

D is the number of days effective service in the pay period.

"(5) Where, in a pay period, a member renders 14 days service, then, subject to subclause (7), the amount of productivity benefit (being interest) to be credited to that member in respect of that pay period is calculated using the formula:

$$\frac{B \times I \times 14}{365}$$

where:

B is the amount of benefit (including interest) that has accrued in respect of the member immediately before commencement of the pay period; and

I is the factor specified in column 2 of the Schedule opposite to the reference to the calendar year specified in column 1 of the Schedule which is the calendar year in which the pay period concludes.

"(6) Where, in a pay period, a member renders a period of service of less than 14 days, then, subject to subclause (7), the amount of productivity benefit (being interest) to be credited to that member in respect of that pay period is calculated using the formula:

$$\frac{B \times D \times I}{365}$$

where:

B is the amount of benefit (including interest) that has accrued in respect of the member immediately before commencement of the pay period; and

D is the number of days service in the pay period; and

I is the factor specified in column 2 of the Schedule opposite to the reference to the calendar year specified in column 1 of the Schedule which is the calendar year in which the pay period concludes.

"(7) Where an amount ascertained in accordance with subclause (2), (3), (4), (5) or (6) includes a fraction of a cent:

- (a) if the fraction is one -half or greater, the amount is increased by one cent; or
- (b) if the fraction is less than one-half, the fraction is disregarded.

"(8) In the application of subclauses (5) and (6) in respect of a period of service of the member in a pay period which concludes in the period from and including 1 July 1992 to and including 31 December 1992, the factor in the Schedule for the calendar year 1992 is reduced by 15%.

"(9) For the purposes of this clause, where a member completes 20 years' effective service in a pay period, the member is regarded as being, in relation to that pay period, a member whose total period of effective service is not less than 20 years."

Reduction of productivity benefit

"8AB.(1) Where a member who has been credited with productivity benefit in accordance with subclause 8AA(2) becomes a member to whom subclause 8AA(3) applies, the amount of productivity benefit credited to that member is, by force of this subclause, reduced by the amount by which the last-mentioned benefit exceeds the benefit which would have accrued if the member had, at all relevant times, been a member to whom subclause 8AA(3) had applied.

"(2) Where a member who has been credited with productivity benefit in accordance with subclause 8AA(2), not being a member to whom subclause (1) has applied, retires and:

- (a) on his or her retirement, he or she is entitled to retirement pay or invalidity benefit under the *Defence Force Retirement and Death Benefits Act 1973*; or
- (b) on or after his or her retirement, he or she is or becomes:
 - (i) a person in respect of whom a transfer value is payable under section 77 of that Act; or
 - (ii) a person in respect of whom deferred benefits are applicable under section 78 of that Act;

the amount of productivity benefit credited to that person is, by force of this subclause, reduced by the amount by which that benefit exceeds the productivity benefit which would have accrued if the person had, at all relevant times, been a member to whom subclause 8AA(3) applied.

"(3) Where:

- (a) subclause (2) has effect in relation to a person because the person was a person to whom deferred benefits were applicable under section 78 of the *Defence Force Retirement and Death Benefits Act 1973*; and
- (b) under subsection 78(6) of that Act those benefits subsequently ceased to be applicable in respect of that person;

the person is credited with an amount calculated in accordance with the formula:

$$(\text{Notional amount} - \text{Amount paid}) + \text{Interest}$$

where:

"**Notional amount**" means the amount that would have been paid to or in respect of the member in accordance with clause 6 on his retirement from the Defence Force if he or she had not been a member referred to in subclause (2); and

"**Amount paid**" means the amount that was paid to or in relation to the member in accordance with clause 6 upon the member's retirement from the Defence Force; and

"**Interest**" means the interest which would have accrued under this Determination in respect of the amount (in this subclause called the "**additional credit**") by which the notional amount exceeds the amount paid if:

- (a) the member had not retired from the Defence Force and had remained a member until the amount payable under this subclause is paid; and
- (b) interest had been credited under this Determination in respect of the additional credit.

"(4) Where a member who has been credited with productivity benefit in accordance with subclause 8AA(2), not being a member to whom subclause (1) has applied, dies, the amount of productivity benefit credited to that person is, by force of this subclause, reduced by the amount by which that benefit exceeds the productivity benefit which

would have accrued if the person had, at all relevant times, been a member to whom subclause 8AA(3) applied."

8. Clause 8B (Amount payable)

8.1 Omit "and 8A", substitute ",8A and 8AA".

9. New clause 8BA

9.1 After clause 8B, insert:

Credit or productivity benefit (being interest) in respect of certain persons who ceased to be members on 1 July 1992

"8BA.(1) This clause applies to a person who:

- (a) was a member of the Emergency Forces or the Reserve Forces on 30 June 1992; and
- (b) was a member within the meaning of this Determination on that date; and
- (c) ceased to be a member referred to in paragraph (b) by reason only of the coming into force of the amendments made to the *Military Superannuation and Benefits Act 1991* by the *Superannuation Guarantee (Consequential Amendments) Act 1992*.

"(2) Despite a person to whom this clause applies having ceased to be a member for the reason given in paragraph (1)(c), this Determination applies to the person as if he or she continued to be a member until the person ceased or ceases to render the period of continuous full-time service which the person was rendering on 30 June 1992 with the exception that no productivity benefit is to be credited to the person under subclause 8AA(2), (3) or (4) in respect of any service rendered by the person after that date."

10. Clause 8C (Interest payable where payment of benefit delayed)

10.1 Omit the clause, substitute:

Interest payable where payment of benefit delayed

"8C.(1) Where a productivity benefit is payable in respect of a person and the payment of the benefit is delayed, the amount of the benefit payable is increased by an amount of interest calculated, in relation to the amount of benefit accrued and in respect of the relevant period, at a rate per annum ascertained by expressing the factor specified in column 2 of the Schedule opposite to the reference to the last calendar year specified in column 1 of that Schedule as a percentage.

(2) In subrule (1):

"**relevant period**", in relation to a person, means the period beginning on the day immediately following the day on which the person (being a member) retired or died, as the case may be, and ending 14 days after the day on which the amount of the productivity benefit payable is determined."

11. New clauses 11, 12 and 13

11.1 After clause 10, add:

Reconsideration of decision of Commissioner

"11.(1) A person affected by a decision made by the Commissioner under subclause 6(2A) may apply to the Commissioner for reconsideration of the decision.

"(2) An application may be in writing addressed to the Commissioner and setting out particulars of the decision that the person wishes to be reconsidered.

"(3) After taking into account, in relation to the decision, any matter that the Commissioner considers relevant, the Commissioner must, by instrument in writing setting out the reasons for doing so, affirm or vary the decision or set it aside and substitute another decision for it.

"(4) The Commissioner must make a copy of an instrument referred to in subclause (3) available to the applicant not later than 28 days after the making of the instrument.

Review of decisions of Commissioner

"12. Applications may be made to the Administrative Appeals Tribunal for review of decisions of the Commissioner under clause 11.

Delegation of function of Commissioner

"13. The Commissioner may, by instrument signed by him or her, delegate the Commissioner's function under subclause 6(2A) to an officer within the meaning of the Public Service Act 1922 who holds, or is for the time being performing the duties of, an office the classification of which is not lower than Senior Officer Grade C."

12. Schedule (FACTORS CONCERNED IN THE CALCULATION OF INTEREST APPLICABLE IN RESPECT OF CERTAIN CALENDAR YEARS)

12.1 Add at the end:

"1993

0.0760".