EXPLANATORY STATEMENT

###### Defence (Individual benefits) Determination (No. 8) 2025

This Determination amends Defence Determination 2016/19, Conditions of service (the Principal Determination), made under section 58B of the *Defence Act 1903* and in accordance with subsection 33(3) of the *Acts Interpretation Act 1901* (AI Act).

Determinations made under section 58B of the Defence Act are disallowable legislative instruments subject to the *Legislation Act 2003*. These instruments are also subject to the interpretation principles in the AI Act.

**Purpose**

The purpose of this Determination is to re-credit a member’s leave credits when they are required to take leave in connection with travel between Kyiv, Ukraine and Warsaw, Poland due to circumstances affecting the ability to travel by air.

**Operational details**

Details of the operation of the Determination are provided at annex A.

**Incorporation by reference**

The Determination makes references to sections of the *Defence Determination 2016/19, Conditions of service*. This Instrument is incorporated into this Determination as in force from time to time.

**Retrospective application**

The retrospective application of this Determination does not affect the rights of a person (other than the Commonwealth) in a manner prejudicial to that person, nor does it impose any liability on such person.

**Human rights compatibility**

The statement of compatibility under subsection 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011* for this Determination is at annex B.

**Review options**

Decisions that are made under the Principal Determination, as amended by this Determination, may be subject to inquiry under the ADF redress of grievance system provided under Part 7 of the Defence Regulation. Also, a person may make a complaint to the Defence Force Ombudsman.

**Consultation**

Before this Determination was made, the consultation was undertaken with Directorate of Attaché and Overseas Management and Military Personnel Branch.

The rule maker was satisfied that further consultation was not required.

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| **Approved by:** | **Sarah Kate McGregor**Acting Director GeneralPeople Policy and Employment Conditions |
| **Authority:** | Section 58B of the *Defence Act 1903* |

**Annex A**

***Defence (Individual benefits) Determination (No. 8) 2025***

***Operational details***

Section 1 of this Determination sets out the manner in which this Determination may be cited.

Section 2 provides that the Determination commences on the day after the instrument is registered.

Section 3 provides that this instrument has authority under section 58B of the Defence Act.

Section 4 provides the purpose of the Determination which is to re-credit a member’s leave credits when they are required to take leave in connection with travel between Kyiv, Ukraine and Warsaw, Poland due to circumstances affecting the ability to travel by air.

Section 5 provides that the Determination applies to the member who holds employee identification number 8265858.

Section 6 defines the following terms for the purpose of the Determination:

* Defence Determination, which means *Defence Determination 2016/19, Conditions of service*, as in force from time to time.
* Posting location, which means Kyiv, Ukraine.
* Decision maker, which means the Director Attaché and Overseas Management.
* Posting period, which means the period starting the on commencement day of this Determination commences and ending on 1 April 2026.
* Travel, which means any travel undertaken by the member that is in connection with a benefit provided under the Defence Determination. A note has been included to clarify that a benefit provided includes a reimbursement for the cost of travel.

Section 7 provides that the member is to be re-credited any leave credits that are taken on a day they are undertaking travel to or from the posting location and Warsaw, Poland during the posting period and the decision maker is satisfied that either there is an air space closure that is affecting travel to or from the posting location and Warsaw, Poland, or that that travel by air is unsafe between the posting location and Warsaw, Poland.

Section 8 provides when the Determination is revoked.

**Annex B**

***Defence (Individual benefits) Determination (No. 8) 2025***

***Statement of Compatibility with Human Rights***

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

**Overview of the Determination**

The purpose of this Determination is to re-credit a member’s leave credits when they are required to take leave in connection with travel between Kyiv, Ukraine and Warsaw, Poland due to circumstances affecting the ability to travel by air.

**Human rights implications**

*Right to the enjoyment of just and favourable conditions of work*

The protection of a person's right to remuneration engages Article 7 of the International Covenant on Economic, Social and Cultural Rights. Article 7 ensures just and favourable conditions of work, including remuneration, safe and healthy conditions, equal opportunity and reasonable limitations.

***Assessment of compatibility***

Schedule 1 is compatible with human rights as it promotes the member’s right to the enjoyment of just and favourable work conditions by ensuring the member does not have their leave credit balance reduced in circumstances when they are unable to travel by air due to reasons that are beyond their control, resulting in them needing to use alternate modes of transport and significantly longer travel times.

**Conclusion**

This Determination is compatible with human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.