

HOUSE OF REPRESENTATIVES

Supplementary Order Paper

Tuesday, 28 August 1990

NATIONAL PROVIDENT FUND RESTRUCTURING BILL

Proposed Amendments

Hon. DAVID CAYGILL, in Committee, to move the following amendments:

Clause 1 (3): To omit from page 4 the words “(except section 67A)”, and substitute the words “(except sections 15A, 15B, 67A, and 69A)”.

Clause 2: To insert, after the definition of the term “Minister” on page 9, the following definition:

“NPF group company” means any company that, at any time before the date on which this Act receives the Royal assent, was a subsidiary of the Board within the meaning of section 158 of the Companies Act 1955, or would have been so if subsection (3) (a) of that section did not apply:

New clauses 15A and 15B: To insert, after clause 15 on page 30, the following clauses:

15A. Board’s power to settle claims—Without limiting any other powers that the Board may have, the Board shall have—

- (a) The power to settle any claim by or against the Board, whether the claim is actual or prospective and whether or not any proceedings have been commenced in respect of the claim; and
- (b) The power to meet out of the Fund, or any appropriate trust fund, pool, or GAT subsidiary, any liability arising out of or in connection with a settlement of any such claim against the Board; and
- (c) The power to enter into any commitments, obligations, or arrangements for the purpose of settlement of any such claim.

15B. Board’s power to invest—For the avoidance of doubt, it is hereby declared that, on and after the 1st day of October 1988, the Board’s power to invest in property any money belonging to the Fund shall include, or have incidental to it, the power to enter into a commitment, obligation, or arrangement under which the Board (or a nominee of the Board) may acquire, or be obliged to acquire, that property.

Clause 32: To add to this clause on page 41 the following subclause:

(3) Any person, whether currently required to contribute or not, who—

- (a) Is or becomes the employer of an employee who is entitled to contribute to an existing scheme after the transfer day; and

(b) Would, if the National Provident Fund Act 1950 had not been repealed by this Act, have been required by section 44 of that Act to contribute in respect of that employee,—

shall also be a corporate contributor for the purposes of this section, and section 30 (3) of this Act shall apply to any such person as if they were required, rather than authorised, to so contribute.

New clause 69A: To insert, after clause 69 on page 66, the following clause:

69A. Power to determine earning rates of schemes for periods up to transfer day—(1) Notwithstanding any enactment or rule of law or the provisions of any existing scheme, the Board may from time to time, with the consent of the Crown and in respect of any period ending before the transfer day,—

(a) Determine a specific earning rate for any existing scheme in existence during that period, which rate may be the same or different from the rate determined in respect of any other existing scheme; and

(b) Pay, or credit, the accounts of contributors to that scheme in respect of that period accordingly.

(2) Section 67A of the National Provident Fund Act 1950 is hereby consequentially repealed.

(3) All determinations, payments, and credits made or purported to be made by the Board under section 67A of the National Provident Fund Act 1950 before the date on which this section comes into force are hereby validated and deemed to have been lawfully made.

Schedule 1A: To insert in clause 4 (6) on page 72, after the word “clause”, the words “(other than the liabilities referred to in subclause (10A) of this clause, for which no property shall be allocated)”.

To insert in clause 4 (10) on pages 72 and 73, after the words “liabilities of the scheme” the first time that they appear, the words “(excluding the liabilities referred to in subclause (10A) of this clause)”.

To insert, after subclause (10) of clause 4 on page 73, the following subclause:

(10A) There shall be allocated to the DBP annuitants scheme all liabilities, and responsibilities to discharge liabilities, of the Board or the Fund—

(a) Arising out of or in connection with any agreement to settle claims (being an agreement to which the Board is a party) which is or becomes unconditional and which relates to any NPF group company; or

(b) Arising out of any act, matter, or thing to which any such agreement relates or refers or which gave rise to any such claims,—

and which exist on or before the transfer day, or arise on or after the transfer day out of events, actions, or circumstances occurring, or statements made, on or before the transfer day.

Schedule 1D: To insert in clause 1 (2) on page 76, after paragraph (b), the following paragraph:

(c) Subparagraphs (ia) and (ib) of clause 2 (1) (a) of this Schedule applied,—

To insert in clause 2 (1) (a) on page 76, after subparagraph (i), the following subparagraphs:

(ia) No settlement of claims in relation to any NPF group company had been entered into by the Board; and

(ib) All property and liabilities of the Board that existed immediately before the transfer day in relation to an NPF group company had

been allocated among the existing schemes by the proposal in a fair and equitable manner; and

To omit from clause 2 (1) (a) (iii) on page 76 the words “subparagraphs (i) and (ii)”, and substitute the words “subparagraphs (i) to (ii)”.

To insert in clause 2 (4) on pages 76 and 77, after paragraph (a), the following paragraph:

- (aa) Shall regard as the paramount objective the need to ensure that members and other beneficiaries of the DBP annuitants scheme are not in any way disadvantaged by the implementation of any settlement of claims in relation to any NPF group company; and

To add to clause 2 the following subclause:

- (7) Any person (including the Board and the Crown) considering, determining, or directing any change in respect of transfer values in terms of subclause (5) of this clause shall have as an objective the need to ensure that members and other beneficiaries of the DBP contributors scheme and DBP annuitants scheme are not in any way—
- (a) Affected by the division resulting in those schemes; or
 - (b) Disadvantaged by the implementation of any settlement of claims in relation to any NPF group company.

EXPLANATORY NOTE

Clause 1: The proposed amendment provides that the new *clauses 15A, 15B, and 69A* (as proposed to be inserted by this Supplementary Order Paper) will come into force on Royal assent.

Clause 2: The proposed amendment inserts a definition of the term “NPF group company”. The definition is required in connection with the amendments to the *1A* and the *1D* Schedules that are proposed by this Supplementary Order Paper. The definition covers any existing subsidiary of the Board. The fact that the Board may have held shares in a company in a fiduciary capacity will not prevent that company being treated as a subsidiary for the purposes of the definition.

New clause 15A: The proposed new clause confers an express power on the Board—

- (a) To settle claims; and
- (b) To use the property of the Fund, or any appropriate trust fund, pool, or GAT subsidiary, to meet any liabilities connected with any settlement of claims.

New clause 15B: The proposed new clause confirms that the power to invest money belonging to the Fund includes a power to enter into commitments to acquire property, such as put options.

Clause 32: The proposed amendment ensures that certain employers who would have been required under section 44 of the National Provident Fund Act 1950 to contribute to an existing scheme in respect of their employees continue to be so required in respect of certain residual categories of employees, i.e., employees who transfer from one employer to another.

New clause 69A: The proposed new clause is in substitution for section 67A of the existing National Provident Fund Act 1950 (as inserted in 1988). Both provisions empower the Board to determine specific earning rates for schemes. The main differences are that—

- (a) The existing provision is subject to any terms and conditions of a scheme to the contrary, while the new provision applies notwithstanding the terms and conditions of any existing scheme;
- (b) The new provision requires that the consent of the Crown be acquired;
- (c) The new provision only applies in respect of periods ending before the transfer day.

The new clause validates all determinations, payments, and credits made under the existing provision.

Schedule 1A: The principal amendment proposed is the insertion of a new subclause relating to the division of the Fund under the proposal for restructuring. The subclause provides that all liabilities of the Board or the Fund arising out of the settlement of certain claims are to be allocated to the defined benefit plan annuitants scheme. To fall within this category, the liability—

- (a) Must either—
 - (i) Arise out of an unconditional settlement to which the Board is a party and which relates to an NPF group company; or

- (ii) Arise out of anything to which any such agreement relates; and
- (b) Must either—
 - (i) Exist before the transfer day; or
 - (ii) Arise after the transfer day out of circumstances before the transfer day.

Schedule 1D: Four amendments are proposed in relation to the provisions to be included in the trust deeds for the defined benefit plan annuitants scheme and contributors scheme.

The first amendment relates to the winding up of the DBP annuitants scheme. The Bill provides that, on a winding up of that scheme, the Crown is to pay into the scheme an amount to bring the scheme assets up to the value that they would have had if certain circumstances had prevailed. The proposed amendment increases that amount to take account of the fact—

- (a) That settlement of claims may have been made by the Board in relation to NPF group companies; and
- (b) That the liabilities connected with any such settlement have been allocated to the DBP annuitants scheme, rather than among all the schemes in a fair and equitable manner.

The remaining 3 changes relate to the provisions for changes in benefits and transfer values in accordance with *clause 2* of the Schedule.

The first proposed amendment affects the matters to be taken into account in deciding whether to change benefits in accordance with the terms of a scheme. If the combined financial position of the DBP annuitants scheme and the DBP contributors scheme is taken into account under *clause 2(1)(a)* of the *1D* Schedule, the amendment requires that the financial position be determined as if—

- (a) There had been no settlement of claims relating to NPF group companies; and
- (b) The property and liabilities in relation to any NPF group companies had been allocated among the existing schemes in a fair and equitable manner.

In effect, the fact that the property of the DBP annuitants scheme is used to meet the liabilities arising out of such settlements is to be disregarded.

The second proposed amendment relates to a decision under *subclause (4)* to change benefits. A new paragraph is proposed requiring any person making that decision to regard as the paramount objective the need to ensure that the members and other beneficiaries of the DBP annuitants scheme are not disadvantaged by settlement of claims relating to any NPF group company.

The third proposed amendment relates to a decision on transfer values where a member transfers to another superannuation scheme. The proposed new *subclause (7)* requires any person making the decision to have as an objective the need to ensure that members and other beneficiaries of the DBP annuitants scheme and the DBP contributors scheme are not in any way affected by the division resulting in those schemes or the implementation of any settlement of claims in relation to an NPF group company.