Financial institutions
Energy
Infrastructure, mining and commodities
Transport
Technology and innovation
Life sciences and healthcare

NORTON ROSE FULBRIGHT

Pensions

The pensions law implications of the General Election 2017

Briefing

May 2017

Introduction

The leading political parties have now published their manifestos, and we have outlined below each of the key policy statements and pledges relating to pensions law.

State Pension Age

The treatment of the State Pension Age (SPA) varies between the main political parties. In the past, SPA was age 65 for men and age 60 for women but, as a result of the *Barber* judgment in 1990, SPA is due to be equalised gradually at age 65 for both sexes by November 2018.

The manifestos state

- Conservative – there is a restated commitment to the continued gradual equalisation of SPA to age 65 by November 2018, and to age 66 by September 2020, with continued gradual rises after that date.
- Labour – the planned increase of the SPA to 66 by the end of 2020 is acknowledged, but the Conservatives' proposal for further increases is rejected. A new review of SPA will be commissioned and women born in the 1950s who have '*suffered injustice*' as a result of the changes in SPA will be compensated for their losses.
- Liberal Democrat – no specific comment on SPA.

Comment

The increase in SPA has long been considered necessary by previous Governments due to the rise in life expectancy. However, the rate of increase and the effect on specific groups, particularly women in the 60-65 age group is a source of continued tension.

The State pension triple lock

The issue of what is known as the triple lock has split the main political parties. This is the system under which the State pension increases each year by the highest of average UK earnings, inflation increases (measured by the Consumer Prices Index (CPI)) and 2.5 per cent. The CPI 12-month rate was 2.7 per cent in April 2017, up from 2.3 per cent in March 2017.

The manifestos state

- Conservative – there is a commitment to maintain the triple lock until 2020, after which it will be replaced by the 'double lock' to 'set pensions on an even course'. The State pension will then increase in line with the higher of earnings and inflation.
- Labour – the triple lock is guaranteed to continue throughout the next Parliament (until 2022), although a previous commitment had been to retain it until 2025.
- Liberal Democrat – the triple lock is guaranteed throughout the next Parliament –until 2022.

Comment

The proposed replacement of the triple lock with the new double lock has been criticised as doing little to resolve the pressures that an ageing population will exert on the public finances over years to come. It is rare for both earnings and inflation to be below 2.5 per cent, so excluding the 2.5 per cent element may have little effect on the long-term generosity of the State pension.

Protecting members' benefits

Each of the three main parties have included proposed measures on how they would seek to protect members' benefits in the future.

An outline of the manifesto pledges is set out below.

- Conservative – proposals focus on the powers of the Pensions Regulator (TPR) which the Conservatives see as insufficient to ensure that pension benefits are protected from '*unscrupulous business owners*'. Measures include
  - A new power to disqualify company directors who '*deliberately or recklessly*' risk a scheme's ability to meet its pension funding obligations, with possible criminal sanctions.
  - A new power for TPR to issue '*punitive fines*' where a scheme has been left '*wilfully*' under-resourced.
  - The introduction for schemes and TPR to scrutinise, clear with conditions or, in extreme cases, stop mergers or takeovers or large financial commitments that threaten scheme solvency.
  - A possible requirement for a bid to be paused to allow greater scrutiny.
- Labour – the current corporate takeover regime will be amended to protect workers and scheme members. Where a business is identified as '*systemically important*', a clear plan will be expected to be in place to protect workers and pensioners.
- Liberal Democrat – there is a specific commitment to '*abolish remaining marriage inequalities in pensions*', which seems to refer to the current position where it is lawful for schemes to provide surviving same-sex partners' benefits in relation to post-five December 2005 pensionable service only. This issue was recently the subject of an unsuccessful member's appeal to the Court of Appeal in the *Walker v Innospec* case.

Comment

The Conservative proposals to give TPR more powers to crack down on company directors who '*deliberately or recklessly*' risk the liability of a pension scheme to meet its funding obligations have been greeted with dismay in some quarters. While it is recognised that company directors must take their position seriously and act responsibly towards members, former pensions minister Steve Webb has warned that such action could put them in '*a precarious position*'. There is a danger that giving too much power to TPR could stifle corporate activity.

Future pension provision

Each party has also set out broad pension policy objectives in relation to future pension provision.

The manifestos state

- Conservative – continued support for the auto-enrolment regime is confirmed, as is an extension of its availability to the self-employed. Those in the '*gig*' economy are also recognised as self-employed and requiring proper protection in terms of pension entitlement. There is a commitment to the creation of sovereign wealth funds – Future Britain funds – backing widespread assets including infrastructure, in which pension fund investment will be encouraged.

- Labour – there is a commitment to an immediate review of the Mineworkers' Pension Scheme and the British Coal Superannuation Scheme as regards the sharing of surplus between the Government and members. Additional steps will be taken to protect nuclear workers' benefits, including any in circumstances of future decommissioning.

- Liberal Democrat – there is a restatement of the 2015 General Election commitment to establish a review to consider single flat rate of pensions tax relief which would be '*more generous*' than the current 20 per cent basic tax relief. There is also a long-term aim to raise the employee national insurance threshold to the income tax threshold, while protecting low earners' ability to accrue pension and benefit entitlements '*as resources allow*'.

Comment

The spectre of wholesale change raises its head again in the Liberal Democrat manifesto. Reforms over recent years, such as multiple reductions in the annual and lifetime allowances for tax-free saving, have reduced the cost of tax relief overall. However, some favour the more radical approach of a single rate of tax relief applied to all pension contributions which, it is argued, would spread the advantages of tax relieved saving more evenly. A tax relief rate of 30 per cent, for example, has been calculated by those who argue in its favour to have a similar cost to the Treasury as the current system. It is claimed that a universal rate could offer a larger incentive to basic rate taxpayers to save.

Nevertheless, the implementation of a single rate of tax relief would be far from straightforward, and would require widespread changes in pension scheme administration. The resulting tax regime could be complex and it is possible that yet more change in the pensions sphere could discourage potential pension savers, at a time when auto-enrolment has engaged a large number of people who previously had no pension savings. However, this could be balanced by current basic rate taxpayers enjoying higher rates of saving.

The idea of a flat rate of relief keeps re-appearing and it is quite possible that it may be implemented at some point in the future, whichever party is elected to Government. Those currently paying tax at the higher and additional rates should bear this in mind when deciding how much to direct into their pension savings in the near future.

View the Conservative Manifesto.

View the Labour Manifesto.

View the Liberal Democrat Manifesto.

nortonrosefulbright.com

NORTON ROSE FULBRIGHT

Contacts

If you would like further information please contact:

London

Peter Ford
Partner
Tel +44 20 7444 2711
peter.ford@nortonrosefulbright.com

Lesley Browning
Partner
Tel +44 20 7444 2448
lesley.browning@nortonrosefulbright.com

Norton Rose Fulbright

Norton Rose Fulbright is a global law firm. We provide the world's preeminent corporations and financial institutions with a full business law service. We have more than 3500 lawyers and other legal staff based in more than 50 cities across Europe, the United States, Canada, Latin America, Asia, Australia, Africa, the Middle East and Central Asia.

Norton Rose Fulbright will combine with Chadbourne & Parke, a leading international law firm, during the second quarter of 2017. Norton Rose Fulbright's expanded practice will have more than 1000 lawyers in the US and 4000 lawyers worldwide.

Recognized for our industry focus, we are strong across all the key industry sectors: financial institutions; energy; infrastructure, mining and commodities; transport; technology and innovation; and life sciences and healthcare.

Wherever we are, we operate in accordance with our global business principles of quality, unity and integrity. We aim to provide the highest possible standard of legal service in each of our offices and to maintain that level of quality at every point of contact.