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

NORTON ROSE FULBRIGHT

November 2019 briefing

the pensions law implications of the UK General Election 2019

November 2019

Introduction

The leading United Kingdom political parties have now published their manifestos ahead of the country's General Election on 12 December 2019. We have outlined below the key policy statements and pledges of the main three parties as they relate to pensions law, and also identified a few other parties' pension aims.

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 was gradually equalised to age 65 for both sexes by November 2018. From December 2018 the SPA started to increase for both sexes to reach 66 by October 2020. The Pensions Act 2014 provides for a review of SPA at least once every five years, and brought forward the increase in SPA from 66 to 67 by eight years. The SPA is due to increase for both men and women to 67 between 2026 and 2028.

The manifestos state

- **Conservative** – SPA is not mentioned in the Conservative manifesto, suggesting that there is no intention to alter the current timetable of increases
- **Labour** – there is a commitment not to increase SPA beyond age 66 and to review retirement ages for physically demanding jobs
- **Liberal Democrat** – no specific comment on SPA.

Comment
The UK operates a pay-as-you-go system, meaning that today's taxpayers meet the costs of today's State pensions. A potential freeze on SPA uplifts will be a burden on the future working population, and will have ramifications for long-term government spending, regardless of promises made in relation to tax increases in this Election. There is no costing in the Labour manifesto for the pledge to retain SPA 66, nor to abandon the currently proposed increases in future.

Review of SPA for women born in the 1950s

The rate of increase in SPA for women born in the 1950s remains a source of continued tension.

The manifestos state

- **Conservative** – there is no mention of revisiting this issue following the failed High Court challenge of the BackTo60 campaign group of the government's SPA increases for this group of wome;
- **Labour** – it is recognised that the generation of women affected have had their SPA changed without fair notification and a compensation system is proposed. Labour also makes a commitment to prevent future change to accrued rights in the State pension
- **Liberal Democrat** – there is a pledge to compensate the affected women in line with the recommendations of the Parliamentary Ombudsman, which are awaited.

Comment
Although the Labour and Liberal Democrat manifestos may give hope to women affected by the increases in SPA, at this stage it is unknown what the Parliamentary Ombudsman will recommend. The Labour pledge for compensation was not costed in its manifesto, but a figure of £58bn has been suggested.

The State pension triple lock

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) and 2.5 percent. All three main parties have made commitments to maintain the "triple lock".

Comment
No change.

Pensions tax

The NHS and the taper relief problem
Members of the NHS pension scheme are experiencing problems regarding the application of the pensions tax-free contribution annual allowance taper. Currently the annual allowance (broadly the rate at which contributions can be paid to a DC scheme or the amount of benefits that can be built up in a DB scheme) is capped at £40,000 per annum. Exceeding the annual allowance results in an annual allowance charge. But the situation is more complex for high earners, such as doctors and consultants. Since April 2016, a tapered allowance has been in force in respect of income over £150,000 per year. The maximum reduction which can apply under the taper is £30,000, so that an individual with earnings of more than £210,000 will have their annual allowance capped at £10,000.

The manifestos state

- **Conservative** – an urgent review will be held within 30 days of the new government being formed, working with the British Medical Association and Academy of Medical Royal Colleges to *'solve the problem'*. In the short term, interim measures will be authorised to address the possible tax charges faced by some of the higher-earning members of the NHS pension scheme
- **Labour** – the party is committed to reviewing the tax and pension changes implemented by the current government to ensure that *"the workforce is fairly rewarded and that services are not adversely affected"*
- **Liberal Democrats** – there is a more specific commitment to *"listen and act on the pensions crisis that is driving away our most experienced clinicians and worsening waiting times and the workforce crisis"*.

Comment
This taper was introduced despite warnings that it would impact public service workers. There has been much publicity recently about senior doctors and consultants cutting down on overtime to avoid pension tax disadvantages, which could result in increases to hospital waiting times.

But this problem cannot be looked at in isolation – any changes to the system must apply across the board to private and public sector workers. The introduction of the taper, in combination with lowering the lifetime allowance, has stopped many high earners from contributing to pension schemes.

The whole system of relief needs an urgent re-think. It makes no economic sense to prevent retirement savings in an ageing society. It is to be hoped that the review for NHS workers triggers a wider response.

Round-up of other tax proposals

- Green – The Green party is the only one proposing a reduction of pensions tax relief on contributions to a flat rate of 20 percent. There is also a proposal to limit tax-free cash to £40,000.
- Conservative – The Conservatives propose a comprehensive review of a loophole which adversely affects those (predominantly women earning between £10,000 and £12,500 per annum) in what are known as net pay schemes. The aim is that the lowest paid stop being at a fiscal disadvantage.
- Labour – Also includes net pay review.

Comment
The Green party proposals on tax-free cash are not vote-winning.

The net pay scheme disadvantage to modestly paid workers has long been recognised since tax relief is not paid to those on the lowest incomes – a situation which is manifestly unfair and should be reformed.

Pension Schemes Bill

The Pension Schemes Bill 2019-20, which made no progress after its first reading due to the Election being called, provides details of several key changes that were to be made to the operation and governance of occupational pension schemes, including enhanced powers for the Pensions Regulator and the introduction of criminal sanctions for the main new offences of avoiding employer debts and risking accrued final salary benefits – see our recent pensions blog. The Bill had cross-party support and it seems it is likely to be brought forward after the General Election.

Pensions Dashboards

- Conservative – of the manifestos of the three main parties, the Conservatives' manifesto gives the strongest commitment to progressing the Bill after the election, with references to provisions on further protecting members from pension scams and from their pension funds being *"plundered by reckless bosses"*.

  The Bill sets out the framework for the creation of multiple new pensions dashboard services feeding into a single dashboard, and the Conservative manifesto pledges to *"reintroduce legislation that ... helps savers be better informed with pension dashboards"*
- Labour – the manifesto appears to limit the implementation of pensions dashboards to just one, government-run, dashboard, stating: *"We will create a single, comprehensive and publicly run pensions dashboard that is fully transparent, including information about costs and charges"*.

Comment
The Pensions Bill proposals to invoke criminal liability for certain transactional activities involving companies with final salary schemes are dangerously widely drafted. The sanctions go a great deal further than the powers proposed by the Department for Work and Pensions (DWP) in its White Paper of 2018 to crack down on company directors who "deliberately or recklessly" risk the liability of a pension scheme to meet its funding obligations. There is a danger that giving too much power to the Pensions Regulator could stifle corporate activity and lending.

Collective defined contribution schemes

Where these are mentioned in the manifestos, there is a commitment to continue with the introduction of the new regime

- **Conservative** – the pledge to reintroduce the Pension Schemes Bill extends to provisions creating *"a new style of pension scheme which is more sustainable for workers and employers"*, which it seems is a reference to the measures in the Bill introducing a new framework for *"collective money purchase benefits"* and *"collective money purchase schemes"*
- **Labour** – there is confirmation that legislation will be introduced to allow the Communication Workers Union and Royal Mail agreement for a *"collective pension scheme"* and that it will *"allow similar schemes"*.

Auto-enrolment

The manifestos make no direct reference to an increase in auto-enrolment minimum contributions. However, Labour has previously referred to the creation of *"a fully qualified and graduate-led workforce"* in respect of changes to childcare and early years education. It proposed an adjustment to the costing of hourly rates *"to factor in 10 per cent pension contributions for staff"*. The current total employer and jobholder contribution (including tax relief) is eight per cent. The party also commits to enhancing pension scheme member protection, giving the commitment to *"stop people being auto-enrolled into rip-off schemes and seek to widen and expand access for more low-income and self-employed workers"*.

Pension scheme governance and investment

The three main parties make varied pledges aimed at improving protection of employees' pension rights. These are

- **Conservative** – there is a proposal to take steps to "unlock" pension scheme funds *"to invest in and commercialise our scientific discoveries"*
- **Labour** – there is a pledge to establish an independent Pensions' Commission, modelled on the Low Pay Commission, to recommend target levels for workplace pensions. The manifesto also proposes the establishment of a Ministry for Employment Rights that could conceivably encompass some form of supervision of workers' pension entitlements. It also intends to amend the Companies Act 2006 to require companies to prioritise long-term growth while strengthening protections for stakeholders, including pension funds
- **Liberal Democrat** – the proposal is to *"Regulate financial services to encourage green investments, including requiring pension funds and managers to show that their portfolio investments are consistent with the Paris Agreement, and creating new powers for regulators to act if banks and other investors are not managing climate risks properly"*.

There is also a pledge to address *"continuing inequalities"* in pensions law for same-sex couples.

Comment
he fact that the Pension Schemes Bill enjoyed cross-party support before the election was called, halting the Bill's progress, seems to indicate that many of its provisions will be progressed whichever party forms a government after the election. However, pensions are obviously not being treated as a centre-stage issue by any of the main parties and it is a great shame that there is no long-term thinking about the pensions landscape (for example, reform of tax relief, increasing auto-enrolment contributions). In addition, there are likely to be many other calls on Parliamentary time in the New Year before the draft of the revised Defined Benefit scheme funding code and other regulatory materials are produced for consultation.

View the manifestos

Conservative

Labour

Liberal Democrat

Contacts

If you would like further information please contact:

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

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

Global resources

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 employ 4000 lawyers and other legal staff based in more than 50 cities across Europe, the United States, Canada, Latin America, Asia, Australia, the Middle East and Africa.

People worldwide

7000+

Legal staff worldwide

4000+

Offices

50+

Key industry strengths

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

Our office locations

Europe

- Amsterdam
- Athens
- Brussels
- Frankfurt
- Hamburg
- Istanbul
- London
- Luxembourg
- Milan
- Monaco
- Moscow
- Munich
- Paris
- Piraeus
- Warsaw

United States

- Austin
- Dallas
- Denver
- Houston
- Los Angeles
- Minneapolis
- New York
- St Louis
- San Antonio
- San Francisco
- Washington DC

Canada

- Calgary
- Montréal
- Ottawa
- Québec
- Toronto
- Vancouver

Latin America

- Mexico City
- Rio de Janeiro
- São Paulo

Asia Pacific

- Bangkok
- Beijing
- Brisbane
- Canberra
- Hong Kong
- Jakarta[1]
- Melbourne
- Port Moresby (Papua New Guinea)
- Perth
- Shanghai
- Singapore
- Sydney
- Tokyo

Africa

- Bujumbura[3]
- Cape Town
- Casablanca
- Durban
- Harare[3]
- Johannesburg
- Kampala[3]
- Nairobi[3]

Middle East

- Bahrain
- Dubai
- Riyadh[2]

1 TNB & Partners in association with Norton Rose Fulbright Australia
2 Mohammed Al-Ghamdi Law Firm in association with Norton Rose Fulbright US LLP
3 Alliances

NORTON ROSE FULBRIGHT

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 4000 lawyers and other legal staff based in more than 50 cities across Europe, the United States, Canada, Latin America, Asia, Australia, the Middle East and Africa.

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. Through our global risk advisory group, we leverage our industry experience with our knowledge of legal, regulatory, compliance and governance issues to provide our clients with practical solutions to the legal and regulatory risks facing their businesses.

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.