EVERSHEDS SUTHERLAND

We Are Diamonds Taking Shape

How Pension Lawyers Can Add Cut, Clarity and Polish to Pensions Legislation

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Isobel Carruthers and Katy Marcus



Some drivers for legislation

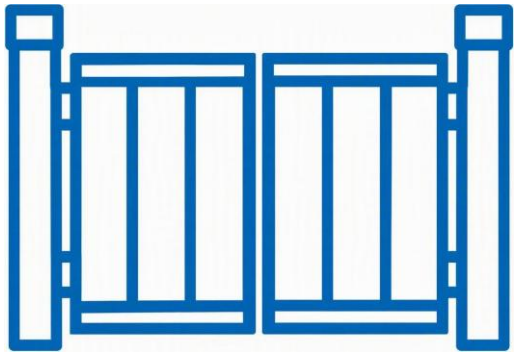
Long-term policy drivers	Auto-enrolment Pensions Commission
Reaction to events	Maxwell BHS
International models	CDC Superfunds
EU legislation	Investment Regulations 2005 Cross border (fully funded)

Some drivers for legislation

 Codifying case law	Section 62 Pensions Act 1995 (Barber)
 Dealing with case law	PO as a competent court Virgin Media Bridge Trustees (PA 2011)
 Adding to common law	Fiduciary duties
 Closing a loophole	Money Purchase Annual Allowance

Making the first cut

Permission to proceed



PBL

Drafting the Bill



OPC

The Stakeholder Pension Schemes (Amendment) (No.2) Regulations 2001

(7A) Where the reporting accountant is or becomes ineligible, by virtue of paragraph (11) or of not satisfying the conditions in paragraph (4), for his appointment as such—

(c) he shall resign (with immediate effect) by notice in writing immediately he is or becomes aware, or, as the case may be, should reasonably be or become aware, that he is or has become so ineligible;

SIXTEENTH REPORT

FROM THE JOINT COMMITTEE OF BOTH HOUSES APPOINTED TO SCRUTINISE STATUTORY INSTRUMENTS, ETC.

The Committee draws the attention of both Houses to these Regulations on the ground that they are defectively drafted.

New regulation 11(7A)(c) (inserted by regulation 7(8)) requires the reporting accountant to give written notice of resignation immediately he is or becomes aware, or should reasonably be or become aware, that he is or has become ineligible to act.

New regulation 11(7A)(e) provides that *notwithstanding sub-paragraph (c)* the trustees or managers of the scheme must remove the reporting accountant immediately, if he is still in place and they are or become aware, or should reasonably be or become aware, that he is ineligible to act.

The Committee asked the Department, in relation to the underlined words, to explain how these provisions were meant to operate and what was the intended sense of the italicised words.

The Department states that the underlined words are intended to encourage vigilance as to the possibility that the reporting accountant may be, or have become, ineligible, that the overall intention is that he should cease to be such as soon as possible after he becomes ineligible, and that the approach taken is similar to that adopted in section 28(5) of the Companies Act 1989. The Department say the italicised words are intended to avoid a conflict between sub-paragraphs (c) and (e) and remove a doubt which might otherwise arise as to whether the trustees or manager can remove the reporting accountant without first giving him the opportunity to resign.

The Committee does not find these arguments convincing. A requirement on a person to act as soon as he ought to be aware of something, if at that time he is not in fact aware of it, is by definition incapable of fulfilment.

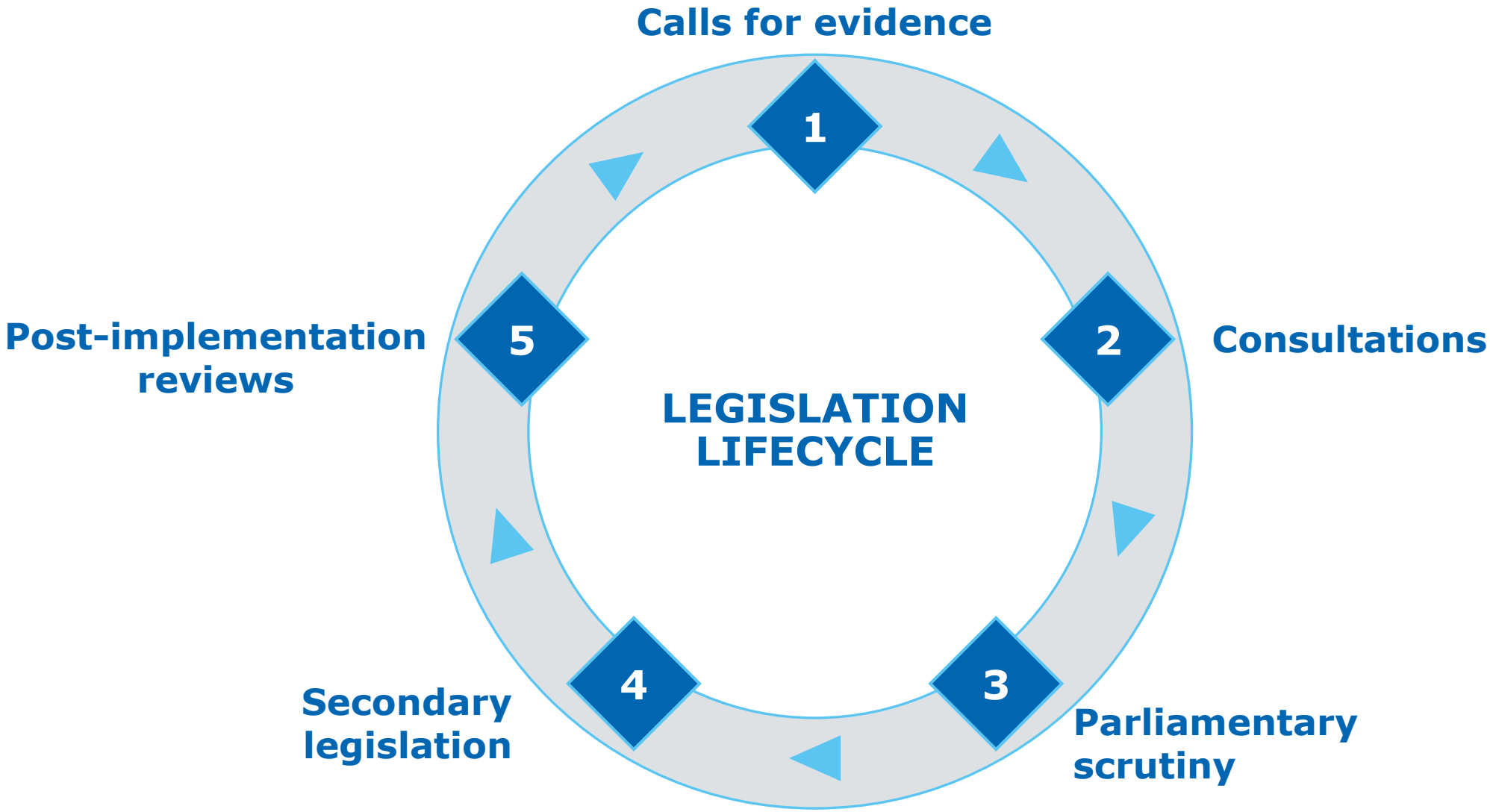
Section 28(5) of the Companies Act 1989 makes no such provision. It penalises contravention of a requirement on an auditor to leave office as soon as he becomes ineligible but provides a defence to a person who did not know and had no reason to believe that he was or had become ineligible. The Department's intentions to encourage vigilance and to ensure that a reporting accountant's appointment automatically terminates as soon as he becomes ineligible require separate provision to be made.

With regard to the italicised words, **sub-paragraph (e) does not derogate from sub- paragraph (c), as is implied by those words, and there is clearly no conflict between those sub-paragraphs**. For both these reasons the Committee reports new regulation 11(7A)(c) and (e) for defective drafting.

The Stakeholder Pension Schemes (Amendment) (No.2) Regulations 2001 (cont.)

(e)notwithstanding sub-paragraph (c), if he is still in place when the trustees or manager are or become aware, or should reasonably be or become aware, that he is or has become so ineligible, the trustees or manager shall remove him immediately.

Opportunities to engage



Five questions to bring clarity



There is something called the Association of Pension Lawyers, and we often ran drafts by them and consulted them.

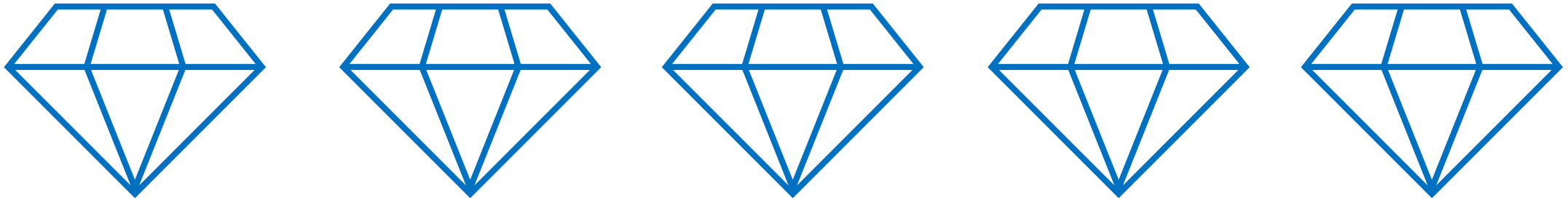
We had embraced the people who understand the technical details.

There was nothing that a government or opposition MP could say to us about the wording of Clause 72 that we had not already run by a pensions barrister or somebody.

Steve Webb

Giving evidence to House of Lords Constitution Committee, reflecting on his time as Pensions Minister

Future legislation taking shape



Pensions Commission

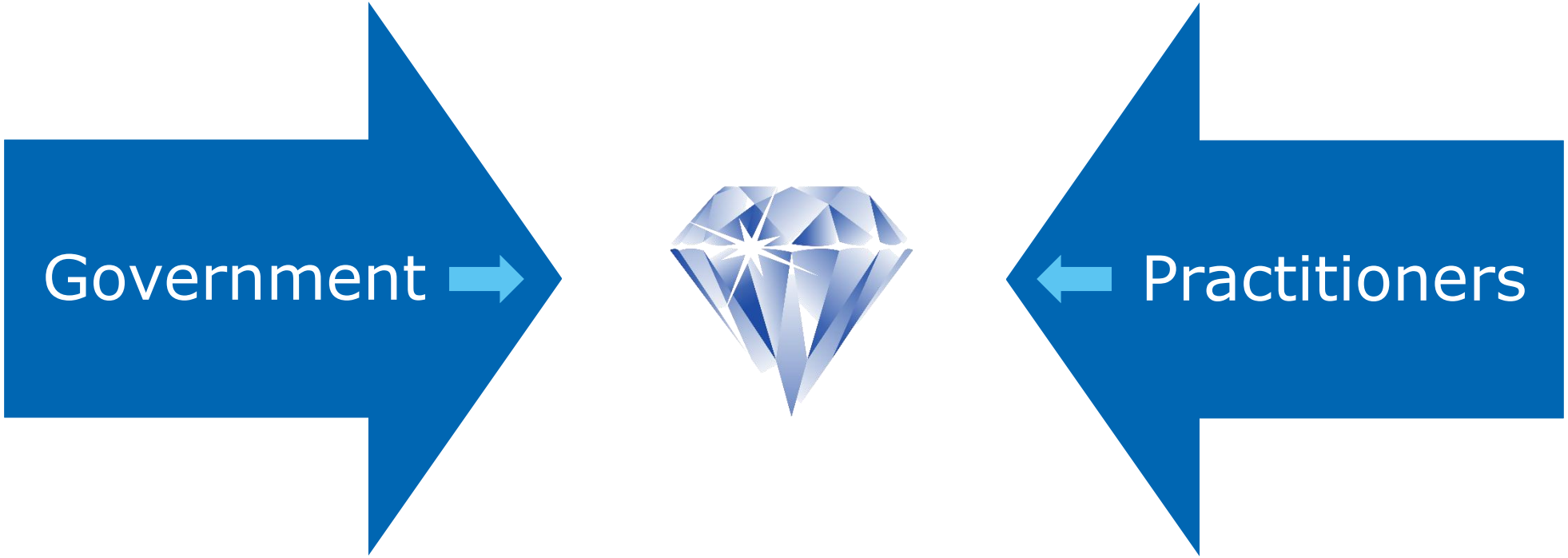
Fiduciary duty guidance

DB endgame

Value-for-money

Professional trusteeship

Adding polish



Questions

