

This week at the UK regulators

STOP PRESS: HMT abandons presumption of responsibility for Senior Managers

As reported in the financial press this morning, HM Treasury has indicated that it proposes to remove the presumption of responsibility for Senior Managers under the new individual accountability regimes due to enter into force in March 2016. Until now, it has been proposed that, in order to avoid personal liability, Senior Managers would have to establish that they had taken "reasonable steps" to avoid breaches by firms occurring or continuing.

Although initial press reports indicated that this would be replaced by an obligation on Senior Managers to have taken "all appropriate steps to prevent a regulatory breach from occurring", the amendment to the relevant legislation now published makes clear that Senior Managers will be liable where they "do not take such steps as a person in the senior manager's position could reasonably be expected to take to avoid the contravention occurring (or continuing)".

If enacted, this change, which responds to concerns voiced by many institutions and individuals about reversing the burden of proof for Senior Managers, will effectively mean that there will be no change to the status quo, whereby the FCA and PRA are obliged to prove that individuals' conduct fell short of what was reasonable in the particular circumstances. The regulators have previously indicated that they intend to release further guidance later in the autumn concerning what will amount to "reasonable steps".

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