Central Bank (Individual Accountability Framework) Bill 2022

Regulatory Impact Analysis

1. Summary of Regulatory Impact Analysis (RIA)

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Department/Office: Department of Finance	**Title of Legislation:** Central Bank (Individual Accountability Framework) Bill 2022
Stage: Publication of draft Bill	**Date:** June 2022
Related Publications: Behaviour and Culture of the Irish Retail Banks	
Available to view or download at: https://www.centralbank.ie/docs/default-source/publications/corporate-reports/behaviour-and-culture-of-the-irish-retail-banks.pdf?sfvrsn=2	
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The following policy options have been considered in relation to the Central Bank (Individual Accountability Framework) Bill:

1. No intervention
2. Implement an Individual Accountability Framework based on the recommendations put forward by the Central Bank of Ireland in the 2018 report "Behaviour and Culture of the Irish Retails Banks".

Preferred option: Option 2
The implementation of the Individual Accountability Framework as recommended by the Central Bank of Ireland is being pursued by the Department of Finance through the Central Bank (Individual Accountability Framework) Bill with changes, as necessary, to ensure the constitutionality and practicality of the Bill, including changes in light of the Supreme Court's decision in the case of *Zalewski v. An Adjudication Officer and Others* (2021).

Option 1 was discounted as

- it would maintain the current regulatory approach, which has been recognised as requiring improvement,
- The Government decision to introduce a Senior Executive Accountability Regime in the financial services industry would not be implemented.
- it would fail to fulfil the Programme for Government commitment to introduce the Senior Executive Accountability Regime (SEAR),
- it would mean that the practical legal changes that are required to provide for individual accountability in the financial services sector would not be achieved, and
- efforts to improve public trust and achieve positive outcomes for customers of financial institutions would not be achieved.

2. Statement of Policy Problem and Objective

Policy Context and Objective

It is the Government's objective, as outlined in the *Programme for Government: Our Shared Future*, to introduce the Senior Executive Accountability Regime (SEAR) to deliver heightened accountability in the banking system.

There have been failings within the financial industry in the financial crisis and in specific instances in recent years. These failings have had severe financial and other consequences for customers of the financial sector. There have been negative financial and reputational impacts for financial institutions with low levels of public trust.

Serious shortcomings in the culture of Irish retail banks were identified in the Central Bank's 2018 report, 'Behaviour and Culture of the Irish Retail Banks', prepared at the request of the Minister for Finance following revelations relating to banks' treatment of customers with tracker mortgages.

The introduction of the Individual Accountability Framework will build on the reforms that have taken place in the regulation of the financial sector in Ireland since the financial crisis, and introduce new financial regulation, with an emphasis on individual and personal accountability and responsibility.

The legislation will provide for:

- the Senior Executive Accountability Regime (SEAR) which will place obligations on certain customer-facing firms and senior individuals within them to set out clearly where responsibility and decision-making lies
- conduct standards for individuals and firms to impose binding and enforceable obligations on all Regulated Financial Service Providers (RFSPs) and individuals working within them with respect to expected standards of conduct
- enhancements to the existing Fitness & Probity Regime to ensure the more effective operation of the regime and its ability to support the individual accountability framework
- breaking of the "participation link" which requires the Central Bank to first prove a contravention of financial services legislation against an RFSP before it can take enforcement action against an individual
- Amend certain of the Central Bank's processes in order to make them more efficient and effective and to ensure that they conform to the required standards of fairness in the administration of justice.

The legislation is intended to:

- act as a driver for recognition of responsibilities by individuals in order to mitigate the risk of misconduct by firms, and deliver better outcomes for consumers and protecting markets,
- introduce Conduct Standards for Controlled Function roles in all firms, which will provide a sense of shared values and will empower staff within firms to question or challenge how firms go about their business.
- clarify the lines of responsibility and decision-making processes within relevant firms.
- build on the Central Bank's existing powers, and enhance the Central Bank's ability to hold senior executives and other individuals to account,
- bring efficiencies to the supervisory and enforcement work of the Central Bank by ensuring greater transparency regarding who is responsible for what, and how roles and responsibilities work together, and
- improve governance and culture across the financial sector.

3. Identification and Description of Options

Option 1: Do nothing or no intervention

The 'do nothing' option is primarily being included for benchmarking purposes. It is not being examined in detail as part of this RIA, because it is not envisaged that this option will be pursued in practice.

To take no action would mean that:

- the Government decision to introduce a Senior Executive Accountability Regime in the financial services industry would not be achieved,
- the Programme for Government commitment to introduce SEAR would not be fulfilled,
- the practical legal changes that are required to provide for individual accountability in the financial services sector would not be achieved, and
- efforts to improve public trust and achieve positive outcomes for customers of financial institutions would not be achieved.

Option 2: Implement the Individual Accountability Framework based on the recommendations of the Central Bank of Ireland

The Individual Accountability Framework (IAF), as provided for in the proposed legislation, is based on proposals made by the Central Bank of Ireland in its 2018 report, 'Behaviour and Culture of the Irish Retail Banks'. These, in turn, are modelled on the Senior Managers and Certification Regime (SMCR) operated in the United Kingdom by the two financial regulators, the Prudential Regulation Authority and the Financial Conduct Authority. The SMCR is widely considered to be a very successful regulatory regime, and has served as the model for similar regimes in other jurisdictions, including Australia, Hong Kong, and Singapore. Feedback from industry in the UK in relation to the SMCR has been broadly positive, with reservations focused on elements that are not replicated in the Irish legislation, particularly the operation of Regulatory References. The Central Bank's proposals have been adapted to take full account of the constitutional rights of all persons concerned.

The IAF will support positive cultural change by providing banks and other regulated financial services providers with the tools on which a positive culture is built. It will also introduce greater individual responsibility and accountability, particularly at senior management level. The Financial Stability Board, an international body that monitors and makes recommendations about the global financial system, has identified lack of accountability as a key cultural driver of misconduct, and the Board has recommended that national authorities identify and assign key responsibilities, hold individuals accountable, and assess the suitability of individuals who are assigned key responsibilities.

The IAF will comprise the following elements:

- A Senior Executive Accountability Regime which ensures clearer accountability by placing obligations on firms and senior individuals within them to set out clearly where responsibility and decision-making lies for their business;
- Standards of behaviour for all regulated financial service providers and the individuals working within them (‘Conduct Standards’);
- Enhancements to the current Fitness and Probity (F&P) Regime and the Administrative Sanctions Procedure (ASP) to strengthen the onus on firms to assess, proactively and on an ongoing basis, individuals performing controlled functions, to surmount some current limitations of the F&P investigative function, and to adapt the ASP to the needs of the IAF.
- Breaking the participation link allows for improved individual responsibility and allows for sanctions to be enforced on individuals separately to firms. This addresses the known deficiency in the legislation which requires the Central Bank to first prove a contravention of financial services legislation against an RFSP before it can take action against an individual who participated in that contravention.
- Amendments to certain of the Central Bank’s processes in order to make them more efficient and effective and to ensure that they conform to the required standards of fairness in the administration of justice.

Senior Executive Accountability Regime (SEAR)

The IAF will provide for obligations on regulated financial service providers with respect to governance, management arrangements and senior executive accountability.

It will also provide clarity to firms and to the regulator as to who is responsible for what, and how decisions are made within firms. Enhancing individual accountability is integral to the regulation of firms, sets a solid foundation for more efficient communication and quicker resolution of issues, and improves decision-making. The ambition is to foster an effective culture and clarity of responsibilities such that staff and senior managers within firms promote consumer interests and proactively address problems.

Where firms’ cultures clearly demonstrate appropriate behaviours and acceptance of responsibility, regulatory authorities can place increased reliance on these firms, enabling a more efficient and effective prioritisation of regulatory resources. In those cases where regulatory issues arise, the framework will facilitate, depending on the particular circumstances, holding firms and/or individuals to account and provide a range of tools to address misconduct where this occurs.

The Senior Executive Accountability Regime will focus initially on sectors of the financial services industry that have a greater customer focus and where the protection of consumer interests is essential.

The provisions also recognise the importance of collective decision-making in financial services organisations as well as individual accountability and the need to recognise the role of individuals in both.

The collective decisions of the board and senior management draw on contributions from a range of individuals with distinct responsibilities. From a firm, individual and regulatory perspective, it is important to be clear as to who is responsible for what within a firm and how decisions are made within a firm's governance structures. Insisting on clarity in respect of individual responsibility reflects the priority that is placed on a culture of good conduct and the need for accountability. Lack of clarity makes it difficult to hold individuals accountable for their actions and decisions.

The SEAR will apply to those performing senior roles in in-scope firms. This is the same cohort within those firms as those who are currently performing pre-approval controlled function roles (PCF) and includes chief executives, company directors, chairs of the board or other committees such as audit, risk and remuneration, executives reporting directly to the board and heads of critical business areas.

Prescribed Responsibilities

Each senior executive in scope of SEAR will have responsibilities, which are inherent to the function that he or she performs. The Central Bank will also prescribe mandatory responsibilities for firms, which must be allocated to senior individuals. This will ensure that there is a senior executive accountable for all key conduct and prudential risks. Recognising that not all prescribed responsibilities will be relevant to every firm, there will be a general list of prescribed responsibilities applicable to all firms, with tailored lists for industry sectors and based on firms' scale and complexity.

Statements of Responsibilities

Each senior executive in scope of SEAR will be required to have a documented Statement of Responsibilities, which clearly sets out his or her role and areas of responsibility. These statements are intended to promote clarity and transparency of individual responsibilities and to provide for a more targeted assessment of the fitness and probity of senior executives by allowing their competence, knowledge, experience and qualifications to be measured against the responsibilities they have been allocated. In addition, such Statements of Responsibilities also decrease the ability of individuals to claim that the culpability for misconduct or wrongdoing lies outside their sphere of responsibility, thereby making it easier to hold individuals to account. Financial institutions will be required to keep Statements of Responsibilities up to date and submitted to the Central Bank.

Responsibility Maps

Each firm in scope of SEAR will also be required to produce a Responsibility Map documenting key management and governance arrangements in a comprehensive, accessible and clear single source of reference. These maps will include, *inter alia*, matters reserved to the board, terms of reference for key board committees, and reporting lines of senior executives to individuals, committees and, if applicable, within the wider group. Where firms are part of a larger group, they will be required to provide details of the interaction of the firm's and the group's governance arrangements. Financial institutions are required to keep Responsibility Maps up to date and submitted to the Central Bank.

Conduct Standards

The Conduct Standards will apply across <u>all</u> of the regulated financial services sector. The Bill sets out what are reasonable and expected standards of behaviour of staff in the regulated financial services industry. These standards (for both staff and businesses) are those that would be expected in any well run and ordered business.

Common Conduct Standards will require staff to act with honesty, integrity, and due skill; to cooperate with the Central Bank as regulator and to pay due regard to the interests of customers and treat them fairly.

Additional Conduct Standards will be introduced alongside the Common Conduct Standards. These standards will apply (in addition to the Common Conduct Standards) to more senior persons, those performing pre-approval controlled functions in relation to all RFSPs and others who perform any other function by which the person may exercise a significant influence on the conduct of the RFSP's affairs. Persons in such senior roles will be required to take reasonable steps to:

(a) ensure that the business of the RFSP for which the person is responsible is controlled effectively;
(b) ensure that the business of the RFSP for which the person is responsible complies with relevant regulatory requirements;
(c) ensure that any delegation of tasks for which they are responsible is to an appropriate person and that they oversee the discharge of the delegated task effectively;
(d) disclose promptly and appropriately to the Central Bank any information of which the Central Bank would reasonably expect notice; and
(e) participate effectively in collective decision making.

Standards for Businesses will apply to all firms who are regulated by the Central Bank. The Bill provides for a new regulation-making power for the Bank to prescribe business standards with which Regulated Financial Service Providers (RFSPs) shall comply to ensure that they act in the interests of customers and of the integrity of the market, act honestly, fairly and professionally and act with due skill, care and diligence.

The Bill provides for the sanctioning of individuals and firms who breach their responsibilities under financial services legislation for failures to meet the relevant conduct standards.

The Conduct Standards will provide clarity to both individuals and firms as to the behaviours that are expected of them and are intended to be instrumental in improving behaviour and culture within the sector. The Bill provides that the Central Bank will prepare and publish guidance in relation to the Conduct Standards and include a requirement for regulated firms to inform staff and provide training with regard to the responsibilities to be imposed on them.

Enhancements to the Fitness and Probity Regime

The Central Bank's practical experience of the F&P Regime since its introduction in 2011 has led to the identification of a number of aspects that should be strengthened as part of a holistic review of individual accountability.

The Conduct Standards will complement the existing F&P Regime by delineating the responsibilities of CFs (including PCFs). The introduction of a certification regime will oblige firms to certify on an annual basis that its CF staff are fit and proper persons to perform their functions. A positive duty on firms to certify each CF will strengthen the regime and increase the focus on the responsibility of firms for the conduct of their staff and their corporate culture.

The F&P regime will be extended to apply to financial holding companies based in Ireland, including investment holding companies, following adaptation of EU legislation relating to such companies into Irish law since the General Scheme was published.

Technical amendments:

The legislation will also provide for certain technical amendments to improve existing legislation to incorporate provisions for guaranteeing fair and transparent procedures and to clarify and streamline certain statutory processes.

4. Analysis of costs, benefits and other impacts for each option

	Cost	Benefit	Impact
Option 1 No intervention	Certain processes of the Central Bank will be less efficient / cost-effective than if Option 2 is pursued. Cultural issues underlying recent major scandals in the financial sector are not effectively addressed.	Potentially reduced expenditure by the Bank and more resources available to the Exchequer	Reduced possibility of seeking to restore trust in banking and the financial sector. Public trust may be damaged further by the perception that no effective action is being taken to address specific problems. Problems may emerge in the future, which could have been prevented by adopting the IAF. Reduced possibility of improving culture and preventing poor outcomes for customers in the absence of appropriate legislative changes. Reduced possibility of dealing with bad behaviour through absence of relevant sanctions.
Option 2 Implement the Individual Accountability Framework based on recommendations of the Central Bank of Ireland	It is likely that implementation of the new regime will involve some additional expense for the Central Bank of Ireland (potentially reducing its surplus income	The legislation will help to begin to restore public trust in the banking sector and the financial services sector more generally. It will deter wrongdoing in financial firms by ensuring the personal accountability of those responsible for any such wrongdoing.	Improved culture in the financial services industry with potential to prevent bad behaviour and reduce the potential for fines. The ultimate objective of the IAF is to achieve better outcomes for consumers, to improve the

	payable to the Exchequer). It is not possible to cost the enforcement of the legislation following enactment. It will depend on a multitude of factors that cannot be quantified at this stage, including how firms and individuals themselves engage with the introduction and bedding in of the relevant processes and procedures and the extent to which there are investigations and inquiries under the newly amended enforcement processes. There will be costs to industry in complying with the proposed legislation. Every regulated firm will have to comply with the certification requirements of the enhanced fitness and	Based on experience with similar legislation in other jurisdictions, the legislation will also benefit regulated financial service providers by creating useful and effective management and governance tools. The proposed IAF is intended to bring many benefits, including that it will: • Act as a driver for positive behaviours and recognition of responsibilities by individuals in order to mitigate the risk of misconduct by firms, delivering better outcomes for consumers and protecting markets. • Introduce Conduct Standards for Controlled Function roles in all firms, which will provide a sense of shared values and will empower staff within firms to question or challenge how firms go about their business. • Clarify the lines of responsibility and decision-	sustainability of the financial system and to drive higher standards of behaviour and governance in financial services firms. Enforceable Conduct Standards will set out the behaviour expected of all regulated firms and key individuals working within them, seeking to provide a sense of shared values and empower individuals at all levels in the organisation to speak up and challenge issues that arise in their firms. Public trust begins to be restored and Ireland's reputation as home to an effectively regulated financial sector is enhanced. More efficient and targeted use of Central Bank resources. Potentially increased administrative burden for smaller financial services firms. Increased compliance burden on industry offset by improvements in internal governance and operations.

	probity regime and provide training to staff on their obligations under the Conduct Standards. Firms in sectors in scope of the Senior Executive Accountability Regime will face additional costs in relation to the preparation and maintenance of responsibility maps and statements of responsibilities. It is likely that, after the initial measures to comply with the legislation, the ongoing cost of compliance will be less as firms become more familiar with their obligations. Given that the changes in the law seek to change culture and practice, proper implementation of the law should change behaviour and	making processes within relevant firms. • Build on the Central Bank's existing powers, and enhance the Central Bank's ability to hold senior and other individuals to account. • Bring efficiencies to the supervisory and enforcement work of the Central Bank due to greater transparency regarding who is responsible for what, and how roles and responsibilities work together. • Improve governance and culture across the financial sector.	Adopting SEAR and other changes may supplement internal planning and organisational processes and use less than expected resources.

	prevent poor behaviour arising which has in the past had negative financial impacts for customers and for financial institutions. It is also likely that, for many firms, the measures required to comply with the legislation are already largely part of their due diligence and governance controls.		

5. Consultation

The objective of the introduction of an Individual Accountability Framework is to achieve better outcomes for consumers, to improve the sustainability of the financial system and to drive higher standards of behaviour and governance in financial services firms.

The Department engaged with the Central Bank following the publication of its Report on "Behaviour and Culture of the Irish Retails Banks", in order to devise policy to ensure that the Central Bank has the powers it needs to regulate effectively, while safeguarding the constitutional rights of all concerned.

The Department has engaged at length with the Attorney General's Office and the Central Bank to ensure that the legislation is both effective and constitutionally robust. The additional powers that will be provided to the Central Bank are significant, and it is important that the correct balance between these powers and the protection of individuals' constitutional rights is struck. It is also imperative that the new provisions can withstand legal challenge.

Officials from the Department engaged with industry representative bodies throughout the process in seeking it views on the matters to be addressed in the Bill and, where appropriate, the provisions of the Bill reflects the outcome of that engagement.

The broad outlines of the legislation have also been flagged in responses to Parliamentary Questions and in speeches by the Minister and by senior officials of the Central Bank.

6. Enforcement and Compliance

The proposal will be implemented by way of primary legislation. Incorporated in this is a requirement for Oireachtas approval for both the Bill and any future amendments to the Act thereafter.

The Bill provides the Central Bank with powers to enforce compliance with the legislation.

7. Review

Consultation

An integral part of the RIA process is to identify ways of periodically reviewing legislation to evaluate the extent to which it is achieving its objectives. This can be achieved in a number of ways such as:

(i) Consulting with stakeholders

(ii) Establishing review groups

As regards performance indicators, the most effective way of ascertaining how well the legislation is performing will be through establishing levels of satisfaction amongst stakeholders.

Given that the legislation amends the Central Bank Acts, there will be consultation with the European Central Bank (ECB) following the publication of the Bill.

The Central Bank has committed to conducting an extensive consultation exercise with the financial services sector once the legislation is enacted to inform the Regulations and the guidance that is to underpin the primary legislation.

Publication of the Bill allows time for further consultation with potentially impacted parties.

Evolution

The purpose of the legislation is to put in place the Individual Accountability Framework and to foster improved culture in the financial sector. Therefore, continuous engagement with relevant stakeholders, including by the Central Bank of Ireland, will be important to ensure that the legislation is achieving its objectives.

The Minister for Finance is also required to be consulted as part of the process of making Regulations by the Central Bank for the purpose of implementing the legislation.

Regulations and guidance to support the implementation of the legislation will be published by the Central Bank to inform the relevant stakeholders.

Public Accountability

From a public accountability perspective, the Governor and/or other senior officials of the Bank shall report to a Committee of the Oireachtas as required under the existing Central Bank legislative framework. The Minister is also answerable to the Oireachtas.

8. SME Test

All SME who are regulated by the Central Bank will be subject to provisions of the Bill. In line with the guidance issued from the Department of Enterprise, Trade and Employment regarding the impact of the proposed legislation on SME the Department has engaged with relevant representative bodies to gather their views on the impact of the provisions. The legislation, which was welcomed in the main by those consulted, provides for clarity, proportionality, safeguards for those to be subject to the provisions to be underpinned by clear guidance from the Central Bank to address the concerns raised. The Central Bank has committed to undertaking a comprehensive public consultation paper for comment by all stakeholders post enactment. As part of that process, the Bank will consider all comments received, update the guidance and regulations where appropriate and issue final guidance and regulations. In addition, the Central Bank will issue a feedback statement which will summarise all comments received, indicate whether action has been taken to amend the guidance and regulations on the basis of those comments and, where action is taken to amend them, set out the change clearly with cross references to the relevant section of the guidance and regulations. The Minister for Finance will have oversight of the regulations to be made as provided for in Part 8 of the Central Bank (Supervision and Enforcement) Act 2013.

9. Publication

This RIA and any future versions of the document shall be published in accordance with the RIA Guidelines for publication. It shall be published on the Department of Finance website and accompanied by a link to the Bill.