

Post Enactment Report

# Central Bank (Individual Accountability Framework) Act 2023 (No.5 of 2023)

April 2024



An Roinn Airgeadais  
Department of Finance

**Title: Central Bank (Individual Accountability Framework) Act 2023**

**Enacted: 9 March 2023<sup>1</sup>**

**Responsibility: Minister for Finance**

**Introduction:**

The Central Bank (Individual Accountability Framework) Act 2023 (the “Act”) was signed into law on 9 March 2023 and all provisions of the Act are now commenced. The Act is drafted so as to achieve its objectives by amending existing Central Bank legislation namely, the Central Bank Act 1942, the Central Bank Reform Act 2010 and the Central Bank (Supervision and Enforcement) Act 2013.

The Act builds on the existing Central Bank legislation in what is one of the most significant pieces of legislation impacting the powers of the Central Bank of Ireland in recent years. There is increased focus both nationally and internationally on strengthening corporate culture, individual behaviour and accountability to mitigate conduct risk and prevent issues arising within firms. It is acknowledged that enhanced frameworks providing for strengthened governance arrangements within firms and individual accountability should incentivise improved behaviours within the financial services sector. The frameworks are supported by the proportionate use by regulators of enforcement powers where required.

**Background to the Act**

The Act is designed to drive and support positive cultural change in the financial services sector by providing regulated financial services providers with the tools to build a positive culture through enhanced governance arrangements and increased accountability. Lack of accountability is seen as a key cultural driver of misconduct. The Act introduces greater individual responsibility and accountability, particularly at senior management level. 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 to examine the culture, behaviours, and associated risk in Ireland’s retail banks, following revelations relating to banks’ treatment of customers with tracker mortgages. The Government’s objective, as outlined in the Programme for Government: Our Shared Future, was to introduce the Individual Accountability Framework to deliver heightened accountability in the financial services system.

The introduction of such an enhanced framework is given effect by:

- the Central Bank (Individual Accountability Framework) Act 2023;
- Regulations made by the Central Bank; and
- Central Bank Guidance on the Individual Accountability Framework.

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<sup>1</sup> S.I. No. 176/2023 provided for the commencement of certain provisions of the Central Bank (Individual Accountability Framework) Act 2023.

S.I. 349 of 2023 commenced the remainder of the provisions of the Act on 29 December 2023.

### Policy objectives

The legislation is intended to raise the standards of expected behaviour for individuals and firms in order to achieve better outcomes for consumers and improve the sustainability of the financial system. It seeks to change the culture by enabling high quality leadership and governance of financial firms and to make individuals in financial services firms more responsive and responsible through driving individual accountability in decision making.

The legislation provides for:

- The introduction of a Senior Executive Accountability Regime for regulated financial services providers in specific sectors (initially, credit institutions, certain investment firms, certain insurance undertakings and incoming third country branches). It requires firms and senior individuals within them to set out clearly where responsibility and decision-making lies in the firm by identifying responsibilities and allocating responsibility for the performance of same to senior executives in the regulated financial services providers. A new “duty of responsibility” obliges senior executives to take reasonable steps to avoid a contravention by the regulated financial services providers occurring (or continuing) in the areas of the firm’s business for which he or she is individually responsible. The duty of responsibility underpins the responsibilities identified and allocated under the Regime by imposing a legal obligation on senior individuals in relation to the discharge of such responsibilities.
- The Fitness & Probity Regime is extended to certain categories of financial holding companies and introduces a certification requirement for firms in relation to the fitness and probity of all staff. The Act includes provisions to ensure the effective operation of the regime and its ability to support the Individual Accountability Framework and the conduct standards for individuals and firms and additional safeguards to ensure the independence of decision-makers in relation to the Fitness and Probity process.
- Conduct Standards setting out standards of behaviour for regulated financial services providers and individuals performing functions in relation to them and providing for binding and enforceable obligations on all regulated financial services providers and relevant individuals working within them (those in Controlled Function roles, including those in more senior Pre-Approval Controlled Function roles) with respect to expected standards of conduct. By setting out standards of behaviour for regulated financial services providers and individuals performing functions in relation to them and providing for the sanctioning of individuals who breach their responsibilities under financial services legislation, the Act serves as a clear declaration of the standards of behaviour expected of those working in the financial services industry which involves significant trust and responsibility and where wrongdoing can have serious consequences for customers and others. It is expected, that as part of conduct standards, those working in the financial services industry act with honesty and integrity, with due skill, care and diligence, to cooperate with the regulator, to treat customers fairly, and to comply with standards of market conduct at all levels and in particular at senior levels in financial institutions.
- Amendments to the Administrative Sanctions Procedure including to provide for the sanctioning of individuals who breach their responsibilities under financial services legislation, including those in junior roles subject to the Common Conduct Standards. These amendments will ensure the Central Bank is able to take enforcement action under the Administrative Sanctions Procedures directly against individuals for breaches of their obligations including the Conduct Standards, rather than only for their



participation (as persons concerned in the management of a firm) in breaches committed by that firm.

Given that the Common Conduct Standards apply to a broad range of both senior and junior roles across all levels of a firm, the Act imposes obligation firms to ensure that such individuals are aware of their responsibilities. For example, firms are required to inform and train such individuals as to the standard of behaviour that they must apply in the execution of their functions. This is to ensure that individuals are clear on what is expected from them. Furthermore, as the Central Bank's enforcement powers will be extended to that wider cohort due regard has been given within the Act to the constitutional rights of all, so as to protect, as far as possible, the individual's constitutional rights.

The Act amends certain of the Central Bank's processes in order to make them more efficient and effective. In light of the decision of the Supreme Court in the case of *Zalewski v. An Adjudication Officer and Others* (2021) certain processes are placed on a statutory footing to ensure independence of functions and Court oversight. The processes amended include the Fitness and Probity regime and the Administrative Sanctions Procedure.

#### Main provisions of the Act

The Act amends the [Central Bank Reform Act 2010](#) to extend the regulation and supervision of financial service providers and persons performing controlled functions and Pre-Approval Controlled functions through the introduction of business standards, conduct standards and the duty of responsibility to drive accountability in the sector. In light of the *Zalewski* judgement the Act provides for the independence of functions, a right of appeal to the Irish Financial Services Appeals Tribunal of a decision of the Head of Financial Regulation to confirm a suspension notice, an increase in the period for which the High Court may extend the duration of a suspension notice and an application for confirmation by the High Court of a decision of the Central Bank or the Governor to issue a prohibition notice.

The Act amends the [Central Bank Act 1942](#) to extend the application of the Administrative Sanctions Procedure to persons performing controlled functions in more junior roles and to certain holding companies. It provides for the admissibility of business records at an inquiry. It provides for the appointment of a panel by the Minister from which appointments may be made for the purposes of certain decisions. The Act introduces a new requirement that sanctions agreed by way of settlement with admissions be confirmed in the High Court in order to take effect.

The Act amends the [Central Bank \(Supervision and Enforcement\) Act 2013](#) to provide for, among other things, the Senior Executive Accountability Regime by way of extending the regulation-making power of the Central Bank to provide for arrangements that financial service providers shall adopt in relation to the allocation of responsibilities and compliance with obligations under financial services legislation.

The Act also provides for a miscellaneous amendment to the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations 2011 ( [S.I. No. 352 of 2011](#) ) and provides for related matters.

### Drafting Process

Throughout the drafting process, the Department engaged with the Office of the Attorney General to ensure that the provisions to be introduced were constitutionally sound and legally robust so as to withstand legal challenges. Due regard was given to the constitutional rights of all concerned as the Bank's enforcement powers are extended to a wider cohort including more junior members. The complexity of certain elements of the Act is necessary to achieve this important objective and to include appropriate safeguards.

The Joint Oireachtas Committee for Finance, Public Expenditure and Reform and Taoiseach undertook pre-legislative scrutiny of the General Scheme and met with the Central Bank and the Minister for Finance on 3 and 10 November 2021 respectively. It also sought written submissions from the Banking and Payments Federation of Ireland (BPF) and the Irish Banking Culture Board (IBCB).

The Committee's report<sup>2</sup> of its pre-legislative scrutiny of the Bill was published in April 2022 with four recommendations. The Minister responded to the recommendations and their implementation by letter to the Chair of the Committee, Mr. John McGuinness on 17 October 2022.

The Central Bank submitted a draft copy of the Senior Executive Accountability Regime regulations and guidance to the Committee on 24 November 2023 on foot of recommendation 3 of the Report.

### Operation of the Act

Following the enactment of the legislation in March 2023, the Department of Finance and the Central Bank of Ireland collaborated to ensure the timely and effective implementation of the legislation. The commencement of some sections of the legislation allowed immediate effect from 19 April 2023 whilst those sections subject to the Central Bank's public consultation which covered Senior Executive Accountability Regime, guidance on the Conduct Standards and Certification were commenced in December 2023.

This allowed industry to provide its views to the Central Bank on the implementation of very significant changes for those operating in the financial sector. Following the public consultation, a number of changes to the draft regulations and guidance were agreed and reflected by the Central Bank in the revised draft documents. These include revision to the prescribed responsibilities and deferral of the Senior Executive Accountability Regime to (Independent) Non-Executive Directors, until a later date, among other matters<sup>3</sup>

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<sup>2</sup>[https://data.oireachtas.ie/ie/oireachtas/committee/dail/33/joint\\_committee\\_on\\_finance\\_public\\_expenditure\\_and\\_reform\\_and\\_taoiseach/reports/2022/2022-04-05\\_report-on-pre-legislative-scrutiny-of-the-general-scheme-of-the-central-bank-individual-accountability-framework-bill-2021\\_en.pdf](https://data.oireachtas.ie/ie/oireachtas/committee/dail/33/joint_committee_on_finance_public_expenditure_and_reform_and_taoiseach/reports/2022/2022-04-05_report-on-pre-legislative-scrutiny-of-the-general-scheme-of-the-central-bank-individual-accountability-framework-bill-2021_en.pdf)

<sup>3</sup> <https://www.centralbank.ie/news-media/press-releases/press-release-central-bank-publishes-individual-accountability-framework-standards-and-guidance-16-november-2023>

## Timeline

Based on the General Scheme published in July 2021, the Central Bank (Individual Accountability Framework) Bill was published on 28 July 2022 and completed all stages of the Houses of the Oireachtas on 1 Mar 2023.

**9 March 2023** - Central Bank (Individual Accountability Framework) Act 2023 enacted.

**13 March 2023** - Commencement of Public Consultation on Senior Executive Accountability Regime, Conduct standards and Certification draft guidance and regulations (CP153)<sup>4</sup> to provide an opportunity for industry and interested parties to inform the final documents.

**19 April 2023** – The Minister signed the first Order commencing some of the provisions of the Act (S.I. No. 176 of 2023).

**20 April 2023** – Central Bank regulations on Fitness and Probity enhancements. Central Bank Reform Act 2010 (Procedures Governing the Conduct of Investigations) Regulations 2023 (S.I. No. 190 of 2023) published by the Central Bank along with Industry letters and guidance.

**20 April 2023** - Central Bank Act 1942 (Service of Notices and Other Documents) (Amendment) Regulations 2023 (S.I. No. 177 of 2023).

**16 November 2023** – Feedback Statement in relation to CP153 published<sup>5</sup>. The Central Bank also published a revised draft of Regulations and Guidance with amendments based on feedback received including the decision to defer the inclusion of (independent) non-executive directors in the Senior Executive Accountability Regime until 1 July 2025. A copy was submitted by the Central Bank to the Joint Oireachtas Committee for Finance, Public Expenditure and Reform and Taoiseach Committee on 24 November on foot of the pre-legislative scrutiny recommendation no 3.

**13 December 2023** – A second consultation (CP 154)<sup>6</sup> was launched in June 2023 on the Central Bank’s proposed Administrative Sanctions Procedure Guidelines. This consultation closed on 14 September and the Central Bank published the Feedback Statement and its revised Administrative Sanctions Procedure Guidelines on 13 December 2023.

**20 December 2023** – Extension of Pre-Approval Controlled Functions categories. Central Bank Reform Act 2010 (Sections 20 and 22) (Amendment) Regulations 2023 (S.I. No. 663 of 2023) and Extension of F&P to holding companies. Central Bank Reform Act 2010 (Sections 20 and 22 - Holding Company) Regulations 2023 (S.I. No. 664 of 2023).

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<sup>4</sup> <https://www.centralbank.ie/publication/consultation-papers/cp153-enhanced-governance-performance-and-accountability-in-financial-services-regulation-and-guidance-under-the-central-bank>

<sup>5</sup> <https://www.centralbank.ie/news-media/press-releases/press-release-central-bank-publishes-individual-accountability-framework-standards-and-guidance-16-november-2023>

<sup>6</sup> <https://www.centralbank.ie/publication/consultation-papers/cp154---consolidated-guidelines-in-respect-of-the-central-bank-s-administrative-sanctions-procedure>

**29 December 2023** – The Common and Additional Conduct Standards, Senior Executive Accountability Regime and Certification provisions were commenced on 29 December 2023 by Commencement Order signed by the Minister on 27 June 2023 (S.I. No. 349 of 2023) and laid before the houses of the Oireachtas. The publication of the final feedback statement and revised Central Bank Regulations for the Senior Executive Accountability Regime are expected in 2024.

**8 January 2024** - Central Bank Reform Act 2010 (Section 21(6)) Regulations 2024 (S.I. No. 2 of 2024).

**16 April 2024** – The Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1))(Senior Executive Accountability Regime) Regulations 2024 (S.I. No.147 of 2024) were published by the Central Bank on 16 April 2024 and laid before the Houses of the Oireachtas. The Senior Executive Accountability Regime will be applicable from 1 July 2024 (excluding (Independent)Non-Executive Directors). From 1 July 2025, (Independent) Non-Executive Directors will be in scope of the Senior Executive Accountability Regime. Nevertheless, (Independent)Non-Executive Directors will be subject to the Common Conduct Standards and the Additional Conduct Standards which include accountability of senior individuals in all firms for running their parts of the business effectively, which were commenced on 29 December 2023.

### Conclusion

The legal instruments to give effect to the Act are now in place and allow for the implementation of the legislation to achieve its objectives. The public consultations (CP153 and CP154) run by the Central Bank provided industry and interested parties with an opportunity to provide views on regulations and guidance in relation to the Senior Executive Accountability Regime, Conduct Standards, Certification and enhancements to the Administrative Sanctions Procedure. The Central Bank listened and amended draft documents to incorporate the views provided by industry to the consultations.

Of the main elements of the Act included in the second Commencement Order, Conduct Standards and Certification have applied directly from the legislation since 31 December 2023, the Senior Executive Accountability Regime will apply to in scope firms from 1 July 2024 and for (Independent) Non-Executive Directors from 1 July 2025. The legislation allows for the extension of the Senior Executive Accountability Regime to other sectors. The Central Bank intends to allow a period of time for operation and learning before it reviews the current implementation and to include learnings in the next iteration. The Act provides that the Minister for Finance be consulted prior to any extension of the regime.

The Individual Accountability Framework enables the Central Bank of Ireland to use its supervisory tools to ensure that firms are well run and to deal appropriately with individuals and firms who contravene financial services law. It should be noted that the success of the Framework will not be based on enforcement and imposition of penalties, but instead, it will be measured by increased trust in regulated financial services providers and better outcomes for consumers as individuals take greater responsibility for how their firms are run. As the application of the Administrative Sanctions Procedure is now extended to enable the Central Bank to take enforcement action directly against individuals for breaches of their obligations under financial services legislation including the Conduct Standards to more junior roles as well as to those in senior roles, it is expected that the Central Bank will apply the Individual Accountability Framework in a reasonable and proportionate manner. The aim of the Individual

Accountability Framework is to achieve better consumer outcomes, not to have an effect which would prevent people from taking up senior roles in a financial services organisation or becoming an independent non-executive director.

Throughout the drafting process and since enactment of the Act there has been ongoing engagement with industry by the Department and the Central Bank and no significant policy issues have been identified. The engagement by the Attorney General's Office throughout the drafting process to ensure fair constitutional balances and Court oversight of processes should allow the objectives of the Act to drive and support positive cultural change in the financial services sector by providing regulated financial services providers with the tools, on which a positive culture is built, to be achieved.

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, placing a new emphasis on individual and personal accountability and responsibility.