



FINANCIAL SERVICES

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# Senior Executive Accountability Regime (SEAR)

by **Aoife Bradley**

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## Central Bank (Individual Accountability Framework) Bill

The General Scheme of the Central Bank (Individual Accountability) Bill has been published by the Irish Department of Finance. The General Scheme, which is a broad policy outline of proposed legislation, proposes to introduce a new Individual Accountability Framework that will impose significant obligations on certain regulated service providers and their senior personnel. Regulated service providers will be required to identify who is responsible for what and how decisions are made. It is expected that the proposed legislation will be implemented in the next 18 months.

## Background

Following the global financial crisis that began in 2007/08, financial regulators around the world have moved to strengthen regulation and rebuild trust in the financial system. In 2011, Ireland introduced the Fitness and Probity regime to maintain high standards of competence, integrity and honesty in regulated firms adding to the Central Bank of Ireland's Administrative Sanctions Procedure (ASP).

The Central Bank proposed the introduction of a Senior Executive Accountability Regime (SEAR) in its 2018 report on the 'Behaviour and Culture of the Irish Retail Banks' which found that *"cultural failings within the banking sector were a significant contributory factor in the financial crisis"*. In 2016, the United Kingdom introduced the Senior Managers and Certification Regime (SMCR) which is broadly comparable to SEAR. The implementation of SMCR in the United Kingdom has been generally successful and its scope of application has been extended twice since its launch.

## The Individual Accountability Framework

The General Scheme sets out four main areas of application:

### 1. Senior Executive Accountability Regime (SEAR)

SEAR focuses on preventing misbehaviour or mismanagement by senior management by requiring individual accountability and providing real enforcement powers. SEAR will also assist financial service providers in strengthening their internal processes by clarifying their management responsibilities.

### 2. Conduct Standards

Three new types of conduct standards applicable to all regulated financial service providers (RFSPs) will be introduced, and these are:

(a) Standards for Businesses (applicable to all RFSPs)

(b) Common Conduct Standards (applicable to all persons performing controlled function (CF) roles in RFSPs)

(c) Additional Conduct Standards (applicable to persons performing pre-approved control function (PCF)

roles and “other persons who exercise significant influence on the conduct of an RFSPs affairs”

Among other things, the General Scheme outlines broad conduct standards such as acting “*honestly, ethically and with integrity*” and, in order to provide clarity, proposes that detailed examples of the expected behaviours will be included in the primary legislation. Breaches of the conduct standards will be enforceable under either the Fitness and Probity regime or the ASP.

### 3. Fitness and Probity Regime

A range of enhancements to the existing Fitness and Probity regime will be implemented to provide for the enforcement and support of the overall framework. A certification process will be introduced where the financial services firm is required to certify that each person carrying out a controlled function role satisfies the applicable fitness and probity requirements.

### 4. Breaking the ‘Participation Link’

Under the existing ASP legislation, the Central Bank can only bring sanctions against persons “*concerned in the management*” of a firm where a case has first been proven against the firm itself. This requirement is being removed and the Central Bank will have the authority to pursue individuals directly for their own misconduct.

## Scope of Application

It is intended that, once implemented, SEAR will apply to persons carrying out “*pre-approval controlled functions*” (senior executive functions or SEFs) in the following classes RFSPs:

- (a) Credit institutions (excluding credit unions).
- (b) Insurance undertakings (excluding reinsurance undertakings, captive (re)insurance undertakings and Insurance Special Purpose Vehicles).
- (c) Investment firms which underwrite on a firm commitment basis and/or deal on own account and/or are authorised to hold client monies/assets.
- (d) Third country branches of the above.

The Central Bank will have the power to extend the application of SEAR to other classes of RFSPs.

Once implemented, the Conduct Standards, the amendments to the Fitness and Probity regime and the breaking of the ‘Participation Link’ will apply to all RFSPs.

Further information on the General Scheme is available [here](#).

## Preparation for Compliance

While the Individual Accountability Framework is not expected to be implemented for another 18 months, RFSPs should take steps now to consider its potential impact on their businesses and to prepare for its introduction.

Some suggested preparatory steps for RFSPs are to:

1. Establish a steering committee / working group composed of HR, Risk and Compliance, Legal and any other key stakeholders within the firm to closely monitor updates and developments in relation to the progress of this proposed legislation and guidance published by the Central Bank and to lead the overall planning and implementation of the Individual Accountability Framework within the firm.
2. Identify the SEFs for the purposes of SEAR and undertake a mapping exercise to identify their roles, areas of existing responsibility and where decision-making lies in the context of existing organisational structures and governance arrangements. In addition to providing the RFSP with an opportunity to review and update existing structures and arrangements, this exercise will assist with the preparation of the

statements of responsibilities for SEFs, and management responsibility maps for in-scope RFSPs which will be required by the Individual Accountability Framework.

3. Consider a methodology for allocating prescribed, inherent and 'other' responsibilities to SEFs and a process for dealing with any differences of opinion between SEFs in terms of their respective responsibilities. Clarity over the specific responsibilities of each business function (particularly those that overlap on certain tasks or projects) will be a key step in this exercise.

4. Consider how the new conduct standards will be communicated internally to in-scope staff and how they will be integrated into its business processes and procedures and the wider organization.

5. Consider what additional training will be needed to ensure that staff are prepared for the new conduct standards together with the additional responsibilities and regulatory obligations under the Individual Accountability Framework.

6. Review the employment contracts of SEFs and HR policies and procedures to ensure that they are fit for purpose for compliance with the Individual Accountability Framework.

7. Identify the staff in CF and PCF roles that will need to be certified for compliance with the applicable standards of the Fitness and Probity regime and consider who will be responsible for the certification process on behalf of the RFSPs.

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