

Central Bank (Individual Accountability Framework) Bill 2022

Bill No.75 of 2022

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Abstract

The Central Bank (Individual Accountability Framework) Bill 2022 will amend existing Central Bank legislation to strengthen and enhance individual responsibility and accountability. It will introduce a code of conduct for individuals and businesses and sanctions for breaches of conduct. It also introduces a new duty of responsibility on individual senior executives to take reasonable steps to ensure such breaches do not occur.



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Key Points

The [Central Bank \(Individual Accountability Framework\) Bill 2022](#) will:

- Introduce a new regime of responsibility, governance and sanctions for senior executives who are managing and operating regulated financial service providers (RFSPs) by means of a Senior Executive Accountability Regime (SEAR).
- Set out codes of conduct for both businesses and individuals, making clear the standards of behaviour that are allowed as well as sanctions that will be faced if responsibilities are breached.
- Introduce a new “duty of responsibility” obliging senior executives to take reasonable steps to ensure that the firm does not breach its obligations under financial services legislation.
- Revise Central Bank processes to make them more effective and efficient and to ensure that they conform to standards of fairness in the administration of justice. These include the Fitness and Probity regime and the Administrative Sanctions Procedure.

Summary

The [Central Bank \(Individual Accountability Framework\) Bill](#) (the Bill) which was published on 28 July 2022, ushers in a new era of accountability in the financial services industry, introducing increased powers for the Central Bank as well as enhanced responsibility and accountability for individual senior executives and businesses via a Senior Executive Accountability Regime (SEAR). Fundamentally, it introduces changes in the way financial service providers interact with their customers and are held to account for their actions in dealing with them.

The [Explanatory Memorandum](#) sets out the main purpose of the Bill:

The principal purpose of the Bill is to confer powers on the Central Bank of Ireland to strengthen and enhance individual accountability in the financial services industry. This is to be achieved by prescribing responsibilities and providing for the allocation of responsibility and accountability for the management and operation of regulated financial service providers (RFSPs) to individuals, while maintaining a balance with the responsibilities that properly belong to the firms themselves.¹

The Bill will amend three principal pieces of legislation in this area:

- [Central Bank \(Supervision and Enforcement\) Act 2013](#) (Act of 2013);
- [Central Bank Reform Act 2010](#) (Act of 2010); and
- [Central Bank Act 1942](#) (Act of 1942).

The Bill is divided into seven Parts, with 95 sections in total. Part 1 deals with standard legislative provisions including definitions and commencement matters. Parts 2 to 4 are the principal provisions which deal with individual accountability and responsibility as well as increasing the powers of the Central Bank. These will be set out the Table of Provisions and also examined in further detail in the Principal Provisions section.

Part 5 relates to privileged material, while Part 6 and Part 7 deal with miscellaneous and transitional provisions respectively. Part 5 of the Bill, encompassing sections 80, 81 and 82 provides for voluntary disclosure of specified privileged legal material to the Central Bank whilst maintaining privilege to any other party. It also provides that where there is a dispute, the Central Bank may apply within six months of the date of refusal to the High Court to determine if the material is privileged. Part 6 of the Bill, encompassing sections 83 to 87 deals with several miscellaneous amendments. Part 7 of the Bill, encompassing sections 88 to 95, provides for transitional measures which clarify the extent to which the new powers contained within the Bill apply or do not apply in respect of past contraventions, ongoing investigations, inquiries, prohibition notices etc.

¹ Central Bank (Individual Accountability Framework) Bill 2022, [Explanatory Memorandum](#), p.1.

Glossary and abbreviations

Table 1 Glossary and abbreviations.

Term	Meaning
IBCB	Irish Banking Culture Board
IFSAT	The Irish Financial Services Appeals Tribunal
PCF Holder	Person performing a pre-approval controlled function in relation to the regulated financial service provider concerned
RFSP	Regulated Financial Service Providers
SEAR	Senior Executive Accountability Regime

Table of provisions

A summary of the Bill's principal provisions (Part 2, Part 3, and Part 4) is included in Table 2 below. The table does not provide a complete summary of the Bill in its entirety. Part 1 of the Bill contains standard legislative provisions entitled 'short title and commencement' and 'definitions' which notes the existing Central Bank legislation already set out in the summary at page 4. Parts 2, 3 and 4 will be examined in greater detail in the section on Principal Provisions.

Table 2 Table of provisions of the Central Bank (Individual Accountability Framework) Bill 2022

Section	Title	Effect
Part 2 – Individual Accountability and Standards		
3	Amendment of section 48 of Act of 2013	<p>Section 3 of the Bill amends section 48 of the 2013 Act which sets out the Bank's power to make regulations. It introduces a new regulation-making power for the Central Bank as follows:</p> <ul style="list-style-type: none"> • Inserts new paragraphs (ba), (bb) and (bc) after section 48(2)(b); <ul style="list-style-type: none"> - (ba) provides for a provision specifying the aspects of a RFSP's affairs that a PCF holder has inherent responsibility for; - (bb) provides for a provision specifying the aspects of a RFSP's affairs for which responsibility is to be allocated to the PCF holder by the RFSP; - (bc) provides for a provision that involves arrangements described in a new

Section	Title	Effect
		<p>subsection (2A) that a regulated financial service provider is to adopt.</p> <ul style="list-style-type: none"> • Inserts a new subsection 2A after section 48(2) which specifies the arrangements to be made as referred to in subsection 2(bc). These are: <ul style="list-style-type: none"> - RFSP to assign responsibility to PCF holder for aspects of affairs set out in regulations under subsection 2(bb) - ensure proper conduct of affairs by assigning responsibility to a PCF holder for aspects of affairs not otherwise covered by already assigned responsibility; - arrangements for the RFSP to monitor the performance of pre-approval controlled functions relevant to it; - arrangements that clarify the management structures and identifies the lines of authority and accountability, and specifies roles and responsibilities, in relation to the management of PCF holders and of other persons by PCF holders; - arrangements that clarify the governance structure showing the relationship between RFSPs and PCF holders with those in the ownership or control of the RFSP or representing its customers or other stakeholders; - arrangements set out under this subsection to be documented. • Inserts a new subsection 4 into section 48 which provides definitions as follows: <ul style="list-style-type: none"> - 'PCF holder' means a person performing a pre-approval controlled function in relation to the regulated financial service provider concerned; - 'pre-approval controlled function' has the meaning given by section 18 of the Central Bank Reform Act 2010."
4	Amendment of section 51 of Act of 2013	Section 4 of the Bill amends section 51(1) of the Act of 2013 by inserting "pre-approval controlled functions," after "providers," in every place it appears in the Act of 2013.

Section	Title	Effect
5	Insertion of Part 2A in Act of 2010	<p>Section 5 of the Bill inserts a new Part 2A (entitled section 17A – Business Standards) into the Act of 2010. This provides for the power of the Bank to prescribe business standards for RFSPs. It provides:</p> <ul style="list-style-type: none"> • A RFSP must comply with any standards prescribed by the Bank under this section. • The Bank must consult the Minister and may consult other appropriate persons before making these regulations. • The business standards must include particular standards as outlined in subsection 3 regarding conduct of affairs. These include some of the following: <ul style="list-style-type: none"> - acting honestly, fairly, and professionally and in the best interests of the customer. - involves not misleading a customer, maintaining proper funds, and having proper risk management and governance processes in place. - Adequate asset protection, acting in good faith, prompt cooperation with foreign authorities and prompt disclosure of any relevant matter. • The Bank has the power to specify the systems and controls, processes, policies, and procedures that RFSPs must adopt to ensure compliance with business standards. • Regulations under this section can apply generally or to a specific class(es) of RFSPs/customers/financial providers and different provisions can apply to different classes. • A copy of any regulations made by a Bank under this section must be given to the Minister as soon as possible after they are made. • Sections 61C and 61D of the Act of 1942 apply to regulations made under this section.
6	Insertion of Part 3A in Act of 2010	<p>Section 6 inserts a new Part 3A into the Act of 2010 which sets out the details of the duty of responsibility and conduct standards (the SEAR). It contains 9 subsections 53A – 53I. The details of these are set out in the Principal Provisions.</p> <ul style="list-style-type: none"> • 53A Interpretation

Section	Title	Effect
		<ul style="list-style-type: none"> • 53B Duty of responsibility • 53C Duty to take steps to meet conduct standard • 53D Relevant circumstances for purposes of sections 53B and 53C • 53E Common conduct standards • 53F Additional conduct standards • 53G Guidelines on conduct standards • 53H Notification and training for persons subject to conduct standards • 53I Limitation of requirements to produce documents, give information or answer questions
Part 3 – Amendment of Part 3 of Act of 2010		
7	Amendment of section 18 of Act of 2010	<p>Section 7 amends section 18 of the Act of 2010 which deals with definitions. It substitutes</p> <ul style="list-style-type: none"> • a new definition of ‘controlled function’ • a new definition of ‘pre-approval controlled function’ • inserts new definitions for a ‘holding company’ and ‘prohibition notice’ • deletes subsections (2) and (3) of section 18 of the Act of 2010.
8	Definition (Chapter 2)	<p>Section 8 substitutes a new section 19 into the Act of 2010. This provides for the definition of ‘relevant obligations’ in relation to a RFSP.</p>
9	Amendment of section 20 of Act of 2010	<p>Section 9 amends section 20 of the Act of 2010 which relates to controlled functions in several ways including:</p> <ul style="list-style-type: none"> • inserting “in relation to regulated financial service providers or in relation to holding companies” after “controlled functions in subsection (1)” • inserting “to be a controlled function in relation to a regulated financial service provider” after “subsection (1)” in subsection (2) • inserting a new section 2A after subsection (2) regarding the power of the Bank to prescribe a function as a controlled function • substituting “A function that is prescribed under subsection (1) as a controlled function in relation to a regulated financial service provider and” for “A controlled function that” in subsection (3) • making several amendments to subsection (4):

Section	Title	Effect
		<ul style="list-style-type: none"> ➤ substituting “A function that is prescribed under subsection (1) as a controlled function in relation to a regulated financial service provider or in relation to a holding company” for “A controlled function”, ➤ inserting “or holding company” after “provider”, ➤ substituting a new paragraph (c) as follows “(c) it relates to affairs of a regulated financial service provider or holding company established in the State conducted by the regulated financial service provider or holding company outside the State.”, • Inserting “or holding companies” after “providers” in both places where it occurs in subsection (5)
10	Application of standards of fitness and probity	Section 10 substitutes a new section 21 of the Act of 2010 which provides for the application of standards of fitness and probity.
11	Amendment of section 22 of Act of 2010	<p>Section 11 amends section 22 of the Act of 2010 which deals with pre-approval controlled functions, in several ways including:</p> <ul style="list-style-type: none"> • inserting “in relation to a regulated financial service provider” after “is a pre-approval controlled function” in subsection (1) • inserting a new subsection 1A defining a pre-approval controlled function • substituting new subsection 2, 2A and 2B for subsection 2 • substituting new subsections (3) and (4)
12	Amendment of section 23 of Act of 2010	Section 12 amends section 23 of the Act of 2010 related to the appointment of persons to perform pre-approval controlled functions by inserting new text to reflect the extension of the Fitness & Probity regime to certain categories of holding company and persons performing controlled functions in relation to them. It also inserts a new subsection (8).
13	Amendment of section 23A of Act of 2010	<p>Section 13 amends section 23A of the Act of 2010 which relates to the appointment of persons to perform pre-approval controlled functions, by</p> <ul style="list-style-type: none"> • substituting a new subsection (1) and (1A) for the current subsection (1) providing that a significant supervised entity (within the meaning of the Single

Section	Title	Effect
		<p>Supervisory Mechanism (SSM) Framework Regulation) is not permitted to appoint a person to perform a prescribed pre-approval controlled function in relation to it unless the Central Bank of Ireland has given written notification that the European Central Bank (ECB) has approved the appointment. It also gives the Bank the power to make regulations prescribing the pre-approval controlled functions approval of appointments, which is subject to the exclusive competence of the ECB.</p> <ul style="list-style-type: none"> • inserting in subsection (3) “the appointment of” after “approve”, and deleting “to the management body”.
14	Amendment of section 25 of Act of 2010	<p>Section 14 amends section 25 of the Act of 2010 to provide that the Head of Financial Regulation may investigate a persons’ fitness and probity who has performed a controlled function after the commencement of this section and within six years immediately preceding the commencement of the investigation. It also inserts “or holding company” after “provider” and “in relation to it,” after “function)” in several places.</p>
15	Notice of investigation	<p>Section 15 inserts a new section 25A into the Act of 2010 providing that the Head of Financial Regulation must serve a written notice of investigation as soon as possible after a decision is made to conduct an investigation. The notice must contain -</p> <ul style="list-style-type: none"> ➤ the reasons for holding the opinion that there is reason to suspect the person’s fitness and probity to perform the relevant controlled function ➤ include a copy of such material as the Head considers appropriate on which that opinion is based ➤ advise the person of his or her right to respond to the contents of the notice within 7 days of the notice being served or longer if considered necessary by the Head of Financial Regulation. <p>The Head of Financial Regulation must also take reasonable steps to keep the person informed of the progress of the investigation.</p>

Section	Title	Effect
		If an investigation is discontinued, written notice must be given to the person providing one or more of the stated reasons contained in section 25A(4)(b).
16	Amendment of section 26 of Act of 2010	<p>Section 16 amends section 26 of the Act of 2010, which relates to the Head of Financial Regulation having the power to issue a suspension notice in several ways. Primarily,</p> <ul style="list-style-type: none"> It inserts “or the Head of Financial Regulation receives a notification under section 43(11A),” after “section 25,” in subsection (1) so that a suspension notice cannot be served on a person in relation to whose fitness and probity an investigation is capable of being conducted only due to the fact that he or she has performed a controlled function within the period of six years immediately preceding the commencement of the investigation. It deletes subsection (6) relating to service of the suspension notice and also inserts “or holding company” after “provider” and “in relation to it,” after “function)” in several places.
17	Amendment of section 27 of Act of 2010	Section 17 makes a minor amendment to section 27 of the Act of 2010, which relates to the effect of suspension notices. It inserts “or holding company” after “provider” in each place where it occurs and substitutes “terms and conditions” for “condition” in subsection (2).
18	Amendment of section 28 of Act of 2010	Section 18 amends section 28 of the Act of 2010 by inserting “or holding company” after “provider” in subsection (a).
19	Amendment of section 29 of Act of 2010	<p>Section 19 amends section 29 of the Act of 2010 regarding confirmation of suspension notices. The main changes include:</p> <ul style="list-style-type: none"> that the Head of Financial Regulation can now also confirm a suspension notice where a function under Chapter 3 or 4 of the Act of 2010 is being carried out in relation to the suspended person. Previously this was only where a fitness and probity investigation in relation to that person is ongoing.

Section	Title	Effect
		<ul style="list-style-type: none"> extends the period of validity of a suspension notice confirmed by the Head of Financial Regulation from three months to six months. provides that a decision to confirm a suspension notice can be appealed to the Irish Financial Services Appeals Tribunal (IFSAT) and also that IFSAT must have regard to the need for a prompt hearing of the appeal.
20	Amendment of section 30 of Act of 2010	<p>Section 20 amends section 30 of the Act of 2010, which relates to enforcement of suspension notice. It provides for minor textual substitutions:</p> <ul style="list-style-type: none"> in paragraph (b) inserting “or holding company” after “provider”, and “in relation to it” after “function” in the second place where it occurs. substituting “or the regulated financial service provider or holding company” for “or regulated financial service provider”.
21	Amendment of section 31 of Act of 2010	<p>Section 21 amends section 31 of the Act of 2010 regarding the power of the Court to extend validity of suspension notices. It provides that:</p> <ul style="list-style-type: none"> the period in which the High Court may extend the validity of a suspension notice changes from three months to six months. further extensions of up to six months can be made by the Court provided that the period of validity does not extend beyond 24 months from the end of the period of validity following confirmation by the Head of Financial Regulation. This also applies where a prohibition is imposed on the suspended person, beyond the time when an application to the High Court for the confirmation of the prohibition notice has been disposed of.
22	Amendment of section 32 of Act of 2010	<p>Section 22 amends section 32 of the Act of 2010 dealing with the power of the Head of Financial Regulation to require persons to give evidence or produce documents. It provides that subsection 2 is amended as follows:</p> <ul style="list-style-type: none"> inserting “or holding company” after “provider” in paragraph (a) inserting “or former holding company” after “provider” in paragraph (b)

Section	Title	Effect
		<ul style="list-style-type: none"> inserting “or holding company” after “provider” in the first place it appears and “or former holding company” after “provider” in the second place it appears in paragraph (c).
23	Amendment of section 39 of Act of 2010	Section 23 amends section 39(2)(b) of the Act of 2010 which relates to payment of allowances and expenses to persons who appear before Head of Financial Regulation by inserting “or holding company” after “provider” in the first place it appears and “or former holding company” after “provider” in the second place it appears.
24	Amendment of section 40 of Act of 2010	Section 24 amends section 40 of the Act of 2010, which relates the power of the Head of Financial Regulation to certify failure to produce documents to the Court. It inserts a new subsection (4) providing that where failure to produce documents, provide information or answer a question is asserted on the basis of legal professional privilege, the Court can appoint a suitable person to examine the material for which privilege is claimed and to prepare a report to assist the Court in determining what action to take.
25	Head of Financial Regulation to prepare report	<p>Section 25 substitutes a new section 41 into the Act of 2010 which provides for the Head of Financial Regulation to prepare a report as soon as possible following the completion of an investigation under this Chapter. It provides:</p> <ul style="list-style-type: none"> that specified matters are to be considered by the Head of Financial Regulation before a report is prepared including relevant information/evidence and any responses from the person concerned. that the Head is prohibited from providing any recommendation, or expressing any opinion, in an investigation report, as to whether any prohibition, and what prohibition should be imposed if the Central Bank or the Governor considers that that the person concerned is not of appropriate fitness and probity.
26	Amendment of section 42 of Act of 2010	Section 26 amends section 42 of the Act of 2010 relating to definitions, substitutes a new expanded definition of “prohibited person”, and deletes the definition of “prohibition notice” which is no longer needed.

Section	Title	Effect
27	Amendment of section 43 of Act of 2010	<p>Section 27 amends section 43 of the Act of 2010 relating to the power of the Central Bank to prohibit persons from carrying out a controlled function. The main changes include:</p> <ul style="list-style-type: none"> • substitutes a new subsection (1) which provides that a person may be prohibited from performing any and all controlled functions in relation to any and all RFSPs or holding companies. • inserts subsection 2A which provides that any finding of fact made in respect of the fitness and probity of an individual must be made on the balance of probabilities. • substitutes paragraphs (b) and (c) in subsection 3 providing for access to any material taken into account by the Bank or the Governor for the purpose of ensuring that the proposed decision is consistent and proportionate. • inserts subsection 4A-4D, relating to the conditions of service of a prohibition notice including that it does not take effect unless confirmed by the High Court under section 45 of the Act of 2010. • inserts subsection 11A which provides that where the Bank or the Governor imposes a prohibition without an investigation, on the basis of indisputable facts, the Head of Financial Regulation is to be notified.
28	Repeal of section 44 of Act of 2010	Section 28 repeals section 44 of the Act of 2010 regarding the enforcement of certain prohibition notices.
29	Amendment of section 45 of Act of 2010	<p>Section 29 amends section 45 of the Act of 2010 relating to Court application to confirm prohibition notice. It substitutes a new subsection 1 and 1A for subsection (1) providing that as soon as possible after the service of a prohibition notice on the prohibited person, the Bank or the Governor, must make an application to the Court for confirmation of the notice. It also provides that this can be done on an <i>ex parte</i> basis once written agreement from the prohibited person is given to the Bank or the Governor.</p> <p>It also substitutes subsection 6(a) to provide for “(a) a serious and significant error, or a series of errors which, taken together, are serious and significant,” in the context of the actions of the prohibited person.</p>

Section	Title	Effect
30	Application to vary or revoke prohibition notice	<p>Section 30 inserts a new section 45A in the Act of 2010. It provides that</p> <ul style="list-style-type: none"> • an application for an order varying or setting aside a prohibition notice confirmed under section 45 may be made to the High Court by the Central Bank, the Governor, or the prohibited person. • an <i>ex-parte</i> application can be made by the Bank or the Governor provided that the prohibited person gives written agreement to it. • the Court has the power if satisfied that there has been a change in circumstances, since the confirmation of the prohibition notice, so that a different decision would be taken in relation to the application for confirmation, it can make an order setting aside or varying the prohibition notice as it thinks fit. This is however subject to the condition that the Court is not permitted to vary a prohibition notice so as to make it more onerous to the prohibited person.
31	Agreement for prohibition notice to have effect without confirmation	<p>Section 31 substitutes a new section 46 into the Act of 2010 which relates to agreement for prohibition notice to have effect without confirmation. It provides that:</p> <ul style="list-style-type: none"> • a prohibited person and any RFSP or holding company in relation to which the prohibited person was performing a controlled function can agree in writing with the Bank or the Governor, to comply with the prohibition notice for an agreed period. • where such an agreement exists, the prohibition notice will not require to be confirmed by the High Court. • where such an agreement is breached the Head of Financial Regulation may apply <i>ex parte</i> to the Court for an order directing the relevant person to comply with the notice. • the agreement may be terminated by written notice to the other parties and once terminated, the prohibition notice ceases to have effect.
32	Amendment of section 48 of Act of 2010	<p>Section 32 amends section 48 of the Act of 2010 by inserting “or a holding company” after “provider”.</p>
33	Service of notices and other documents	<p>Section 33 inserts a new section 49A into the Act of 2010 providing that for the purposes of the giving or service of</p>

Section	Title	Effect
		notices or other documents under Part 3 of the Act, section 61G of the Act of 1942 applies so that references to the Central Bank include references to the Governor and the Head of Financial Regulation.
34	Amendment of section 51 of Act of 2010	Section 34 amends section 51 of the Act of 2010 relating to the effect of Part 3 by inserting “or holding companies” after “providers”.
35	Amendment of section 52 of Act of 2010	<p>Section 35 amends section 52 of the Act of 2010 by inserting a new subsection (4) which provides that:</p> <ul style="list-style-type: none"> the function of conducting a fitness and probity investigation, or any function for or in connection with the conducting of such an investigation, is not performed by the person who formed the opinion. any function in relation to the confirmation of a suspension notice by the Head of Financial Regulation should not be performed by a person who performed a function in relation to the issue of the suspension notice. any function in relation to the imposition of a prohibition, following a fitness and probity investigation, should not be performed by a person involved in that investigation. the section does not prevent the person who formed the opinion, that there is reason to suspect the person's fitness and probity to perform the relevant controlled function, from exercising functions, of management, advice, once these do not impact the independence of the investigation.
36	Independence of decision-makers	Section 36 inserts a new section 52A into the Act of 2010 providing that the Central Bank is not permitted to rely on any contract, including a contract of employment, with a person exercising the functions of deciding to issue or confirm a suspension notice or to impose a prohibition, in any respect that may affect the person's independence in the exercise of that function.
Part 4- Amendment of Act of 1942, Chapter 1 – Amendment of Part IIIC of Act of 1942		
37	Amendment of section 33AN of Act of 1942	Section 37 amends section 33AN of the Act of 1942 by inserting additional definitions for the purposes of interpretation of Part IIIC of the Act and provides that, for the purposes of Part IIIC, a person is concerned in the management of a body corporate or other entity if the

Section	Title	Effect
		person is in any way involved in directing, managing or administering the affairs of the body or other entity.
38	Amendment of section 33ANC of Act of 1942	Section 38 amends section 33ANC of the Act of 1942 to allow for the breaking of the “participation link” by replacing the concept of a person concerned in the management of an RFSP with the concept of a person performing a controlled function in relation to an RFSP.
39	Amendment of section 33ANE of Act of 1942	Section 39 amends section 33ANE of the Act of 1942 to allow for the breaking of the “participation link” by replacing the concept of a person concerned in the management of an RFSP with the concept of a person performing a controlled function in relation to an RFSP.
40	Amendment of section 33ANF of Act of 1942	Section 40 amends section 33ANF of the Act of 1942 to allow for the breaking of the “participation link” by replacing the concept of a person concerned in the management of an RFSP with the concept of a person performing a controlled function in relation to an RFSP.
41	Amendment of section 33ANG of Act of 1942	Section 41 amends section 33ANG of the Act of 1942 to allow for the breaking of the “participation link” by replacing the concept of a person concerned in the management of an RFSP with the concept of a person performing a controlled function in relation to an RFSP.
42	Application of Part to holding companies under Part 3 of Central Bank Reform Act 2010	<p>Section 42 amends Chapter 1 of Part IIIC of the Act of 1942 by inserting a new section 33ANH into the Act of 1942. This provides for:</p> <ul style="list-style-type: none"> the application of Part IIIC of the Act in relation to the commission or suspected commission by a holding company of a: <ul style="list-style-type: none"> contravention of a provision of Part 3 of the Central Bank Reform Act 2010 a direction given to, or a requirement imposed on, such a holding company under that Part or of any obligation imposed on such a holding company by Part IIIC of the Act of 1942, or imposed by the Bank pursuant to a power exercised under that Part; Part IIIC of the Act applies in relation to participation by a person, while concerned in the management of such a holding company, in the commission by the holding company of such a contravention.

Section	Title	Effect
43	Amendment of Chapter 2 of Part IIIC of Act of 1942	Section 43 amends Chapter 2 of Part IIIC of the Act of 1942 by inserting new sections 33ANI (Interpretation (Chapter 2)), 33ANJ (Investigation of suspected prescribed contravention) and 33ANK (Investigation report) into the Act of 1942. These will be set out in more detail in the Principal Provisions.
44	Bank may hold inquiry into suspected commission of or participation in prescribed contravention	Section 44 substitutes a new section 33AO of the Act of 1942 gives the Central Bank the power to hold an inquiry into the suspected commission or participation of a prescribed contravention where it has reasonable grounds for such suspicion and after it has considered the final report and any relevant submissions.
45	Notice of inquiry, submissions, attendance and adjournment	Section 45 amends section 33AP of the Act of 1942 to provide that: <ul style="list-style-type: none"> the Central Bank must give written notice to a person concerned regarding a proposed inquiry. The notice must include: <ul style="list-style-type: none"> the grounds on which the Bank's suspicions are based. the date, time, and place, at which the inquiry will be held. invite the person either to attend the inquiry or make written submissions to it. The person can lodge with the Bank any written submissions that the person wishes the Bank to take into account when considering the matter to which the inquiry relates. Any adjournment of an inquiry requires the Bank to keep the person concerned informed of when and where it will resume. The Bank can proceed with an inquiry in the absence of the person concerned so long as that person has been given an opportunity to attend the inquiry or to lodge any written submissions.
46	Amendment of section 33AQ of Act of 1942	Section 46 amends section 33AQ of the Act of 1942 relating to decisions the Bank can make following an inquiry. It makes a number of substitutions to section 33AQ including that <ul style="list-style-type: none"> the Central Bank must make a finding following the conclusion of an inquiry, on the balance of probabilities as to whether the person is

Section	Title	Effect
		<p>committing/participating or has committed/participated in the contravention.</p> <ul style="list-style-type: none"> that the Bank must have consider all relevant matters, including the final investigation report, any submissions provided with the report, and any evidence given or submissions made during the inquiry. that a notification of the Bank's decision at the conclusion of an inquiry must state that the inquiry subject can appeal against the finding, and any decision to impose a sanction to IFSAT. it enables the breaking of the "participation link" by replacing the concept of a person concerned in the management of an RFSP with the concept of a person performing a controlled function in relation to an RFSP.
47	Alternative procedure when commission of or participation in prescribed contravention is acknowledged	<p>Section 47 amends section 33AR of the Act of 1942 to provide that</p> <ul style="list-style-type: none"> the Central Bank can after considering the final investigation report or where there are undisputed facts in its opinion that mean an investigation is unnecessary, dispense with an inquiry and prescribe sanctions. this is only where a person acknowledges the commission or participation in the prescribed contravention and once they have given their consent to this. the Central Bank can also hold an inquiry to determine what (if any) such sanction should be imposed on the person. If such an inquiry takes place, the Bank must notify the person of its decision including of any sanction imposed. such an inquiry must be confirmed by the High Court.
48	Considerations relevant to imposition of sanctions	<p>Section 48 inserts a new section 33ARA into the Act of 1942 introducing relevant considerations to be taken into account when the Bank is deciding whether to impose sanctions, what type of sanction or the level of a monetary sanction if any. These are set out in detail in the Principal Provisions section.</p>

Section	Title	Effect
49	Amendment of section 33AS of Act of 1942	Section 49 amends section 33AS into the Act of 1942 to enable the breaking of the “participation link” by replacing the concept of a person concerned in the management of an RFSP with the concept of a person performing a controlled function in relation to an RFSP.
50	Amendment of section 33AT of Act of 1942	Section 50 amends section 33 AT into the Act of 1942 to enable the breaking of the “participation link” by replacing the concept of a person concerned in the management of an RFSP with the concept of a person performing a controlled function in relation to an RFSP.
51	Observance of directions imposing disqualification or conditions	Section 51 amends section 33AU of the Act of 1942 by substituting a new section that provides that a RFSP must ensure that a person is not allowed to perform a controlled function in relation to it if that would contravene a direction disqualifying the person from performing such a function.
52	Amendment of section 33AV of Act of 1942	Section 52 amends section 33AV of the Act of 1942 by making several substitutions providing that <ul style="list-style-type: none"> the Central Bank can enter into a written agreement with a person where a person is committing/has committed or is participating in/has participated in a prescribed contravention. the Bank does not require acknowledgement by the person of the commission of or participation in the prescribed contravention. High court confirmation of any sanctions imposed under the agreement is not required.
53	Appeal, confirmation and taking effect of decisions under this Part	Section 53 amends section 33AW of the Act of 1942 by substituting a new section which provides <ul style="list-style-type: none"> for a right of appeal to IFSAT to a finding by the Central Bank or imposition of a sanction following an inquiry. confirmation of the High Court is required before an inquiry decision and an appeal decision can take effect. the High Court must confirm such a decision unless there was a manifest and fundamental error of law or the sanction is manifestly disproportionate. where the Court does not confirm such a decision, it can substitute any appropriate decision that the

Section	Title	Effect
		Bank /IFSAT could have lawfully made or remit the matter for reconsideration to the Bank/ IFSAT.
54	Confirmation of sanctions imposed by consent	<p>Section 54 inserts a new section 33AWA into the Act of 1942 providing that</p> <ul style="list-style-type: none"> • where the Central Bank imposes a sanction with the consent of a person who has admitted to the commission of, or participation in, a prescribed contravention, it must as soon as possible apply to the High Court for confirmation. • the High Court must confirm the imposition of the sanction unless it is satisfied that the sanction is manifestly disproportionate. • where confirmation is not given, the High Court remit the matter for reconsideration by the parties, together with any recommendation of as to what aspects of the matter should be reconsidered.
55	Repeal of section 33AX of Act of 1942	<p>Section 55 repeals section 33AX of the Act of 1942. Section 33AX provides that a decision at the conclusion of an inquiry is appealable to IFSAT. This will be provided for by the new provisions relating to appeals and court confirmation in section 33AW of the Act of 1942, as amended by section 54.</p>
56	Interpretation (Chapter 3)	<p>Section 56 amends Chapter 3 of Part IIIC of the Act of 1942 by inserting a new section 33AXA before section 33AY providing for new definitions ‘inquiry members’ has the meaning given by section 33BE(5) and ‘person presiding’ in relation to an inquiry means the inquiry member appointed to chair the inquiry.</p>
57	Amendment of section 33AY of Act of 1942	<p>Section 57 amends section 33AY of Act of 1942 relating to proceedings at inquiries. It inserts a new subsection 2A which provides that the functions of the Central Bank include the making of submissions, leading of evidence, and examination of witnesses on behalf of the Bank, and any other function required for conducting the inquiry.</p> <p>It also provides that the Bank may be assisted by a legal practitioner for the purpose of performing any of those functions.</p>
58	Amendment of section 33AZ of Act of 1942	<p>Section 58 amends section 33AZ of the Act of 1942 by inserting a new subsection (4) which provides that the Central Bank may publish a transcript of all or part of the proceedings of an inquiry once it is satisfied that in doing so a person’s reputation would not be unfairly prejudiced.</p>

Section	Title	Effect
59	Power to order information about proceedings not to be disclosed	<p>Section 59 inserts a new section 33AZA in the Act of 1942 which provides that the person presiding at an inquiry can order that specified information relating to specified proceedings before the inquiry, will not be disclosed. It does not prohibit the disclosure of information in such form once it is not possible to ascertain the identity of the persons from the information.</p> <p>It also provides that a person who contravenes such an order will be guilty of an offence.</p>
60	Confidential information not to be disclosed	<p>Section 60 inserts a new section 33AZB in the Act of 1942 to provide that where confidential information is provided to a person for the purposes of an inquiry, that person must not disclose that information (other than to his or her legal representative) unless authorised to do so by the Central Bank or required to do so by law.</p> <p>If a person does disclose such confidential information they will be guilty of an offence.</p>
61	Amendment of section 33BA of Act of 1942	<p>Section 61 amends section 33BA of the Act of 1942 which provides that, where a person engages in conduct including threatening/abusive/obstructive behaviour at an inquiry, the Central Bank can apply for a Court order requiring the person to comply with any request or requirement under the Act and not to repeat the behaviour.</p> <p>If the person fails to comply with such order, the Bank can deal with the matter as if it were a contempt of that Court.</p>
62	Documentary evidence	<p>Section 62 inserts a new section 33BAA in the Act of 1942 providing that</p> <ul style="list-style-type: none"> information contained in a document must be admissible in an inquiry as evidence of any fact in the document of which direct oral evidence would be admissible. the party proposing to give such documentary evidence must serve notice on each of the other parties to the proceedings advising of their intention. if any other party to the proceedings objects to the admission of the documentary evidence, the person presiding at the inquiry must decide the matter in the interests of justice.

Section	Title	Effect
63	Amendment of section 33BB of Act of 1942	Section 63 amends section 33BB of Act of 1942 providing for minor textual changes to that section.
64	Amendment of section 33BC of Act of 1942	Section 64 amends section 33BC of the Act of 1942 by substituting new subsection (1) and (2). It provides for enabling the breaking of the “participation link” by replacing the concept of a person concerned in the management of an RFSP with the concept of a person performing a controlled function in relation to an RFSP. It also provides that, if the Central Bank has entered into a settlement agreement, it can publish particulars of the agreement subject to considerations of professional secrecy, confidentiality and/or unfair prejudice to a person’s reputation.
65	Amendment of section 33BD of Act of 1942	Section 65 amends section 33BD of the Act of 1942 by inserting a new subsection 1A which provides that Central Bank can prescribe guidelines in relation to the determination of appropriate sanctions and monetary penalties to be imposed under Part IIIC of the Act.
66	Amendment of section 33BE of Act of 1942	Section 66 amends section 33BE of the Act of 1942 by inserting new subsections (3)-(7) providing that certain functions in relation to an inquiry are restricted to ensure that the same person does not perform functions or exercise powers of the Central Bank so that it does not result in unfairness to any person concerned. It also provides that the inquiry members must be appointed by the Bank from a panel established by the Minister.
67	Limitation of judicial review	Section 67 substitutes a new section 33BF of the Act of 1942 to provide that leave cannot be granted for judicial review of a finding made at the conclusion of an inquiry as to whether a person is committing or participating in, or has committed or participated in, a prescribed contravention, or of a decision to impose a sanction at the conclusion of an inquiry.
68	New Chapter 4 inserted into Part IIIC of Act of 1942	Section 68 inserts a new Chapter 4 into Part IIIC of the Act of 1942. A new section 33BG provides that proceedings, reports and communications of an investigation or inquiry under Part IIIC are absolutely privileged. A new section 33BH provides that the provisions relating to the service of documents in section 61G and in any

Section	Title	Effect
		regulations made under that section apply for the purposes of Part IIIC as if references to the Central Bank included references to an authorised officer.
69	Establishment of panel	Section 69 inserts Part IIID into the Act of 1942 after section 33BH, comprising of a new section 33BI, which provides for the establishment of a panel from which decision-makers for inquiries under the Administrative Sanctions Procedure and other purposes can be appointed by the Central Bank.
70	Amendment of section 57R of Act of 1942	Section 70 amends section 57R of the Act of 1942 by deleting the provisions relating to appeals to IFSAT that are superseded by the provisions of this Bill relating to such appeals.
71	Repeal of section 57S of Act of 1942	Section 71 repeals section 57S of the Act of 1942 relating to conditions of stay order.
72	Amendment of section 57Z of Act of 1942	Section 72 amends section 57Z of the Act of 1942 providing that, after hearing an appeal against a decision to impose a suspension or a prohibition under the Act of 2010 , IFSAT may remit the matter for reconsideration by the Central Bank, together with any recommendation or direction as to what aspects of the matter should be reconsidered, and set aside the decision.
73	Amendment of section 57AC of Act of 1942	Section 73 amends section 57AC of the Act of 1942 to provide that provisions relating to the effect of a decision of IFSAT are subject to section 33AW of the Act of 1942.
74	Amendment of section 2 of Act of 1942	Section 74 amends section 2 of the Act of 1942 by the deletion of subsection (4) thereby enabling the breaking of the participation link by replacing the concept of a person concerned in the management of an RFSP with the concept of a person performing a controlled function in relation to an RFSP.
75	Amendment of section 33AK of Act of 1942	Section 75 amends section 33AK of the Act of 1942, providing that the confidential information to which section 33AK applies includes not only information the disclosure of which is directly prohibited by the Rome Treaty, the ESCB Statute or the supervisory EU legal acts, but also information the disclosure of which is required to be prohibited by the Rome Treaty, the ESCB Statute or the supervisory EU legal acts.
76	Amendment of section 34 of Act of 1942	Section 76 amends section 34 of the Act of 1942 in subsection (1), by the substitution of “Schedule 4” for “the Third Schedule” by way of correction.

Section	Title	Effect
77	Amendment of section 57G of Act of 1942	Section 77 amends section 57G of the Act of 1942 deleting subsection (1A) as it is obsolete.
78	Amendment of section 61G of Act of 1942	Section 78 amends section 61G of the Act of 1942 by deleting an obsolete reference to the Irish Financial Services Regulatory Authority, which was abolished by the Act of 2010.
79	Amendment of Schedule 2 to Act of 1942	Section 79 amends Schedule 2 to the <i>Act of 1942</i> , which relates to designated enactments and designated statutory instruments, and if breached constitute an infringement. It substitutes sections 33AU, 33AZA, and 33AZB of the <i>Act of 1942</i> for Item 3 and Parts 2A and 3A of the Act of 2010 for Item 38.

Source: Derived from the [Central Bank \(Individual Accountability Framework\) Bill 2022](#)

Background

An organisation's culture can either be one of its biggest strengths or its most harmful liability.

2

As recently as 27 September 2022, in what has become the largest fine to date issued by the Central Bank, Bank of Ireland was fined €100.5m for what was noted as “a series of significant and long-running failings” in respect of nearly 16,000 tracker mortgage customer accounts between August 2004 and June 2022. These failings resulted in the loss of 50 properties, 25 of which were family homes, which could have been avoided if Bank of Ireland had complied with its most basic and fundamental obligations.³ The Central Bank's Director of Enforcement and Anti-Money Laundering, Seána Cunningham, referred to the significance and importance of how businesses treat their customers, remarking that:

The way in which a business measures its success must include how it treats its customers. **If a firm has the right culture**, the Central Bank's role should not - as was required here - extend to prolonged engagement to ensure fair outcomes for consumers. We expect firms to promptly make things right when things go wrong. **Such a consumer-centric culture** should not be viewed as a burden or an impediment. It **can, and must, sit equally alongside a firm's other business objectives**.⁴

Several other banks including Permanent TSB, Ulster Bank, KBC and AIB have also been subject to substantial fines. However, to date, there has been only one inquiry into a single individual's involvement on foot of the Central Bank's Tracker Mortgage Examination. This person worked with Permanent TSB at the time and there have been no other individual sanctions.⁵ It would appear from information on the Central Bank's website that this inquiry is on-going and remains to be concluded.⁶

Cultural failings were found to be one of the contributory factors of the Irish financial crisis⁷ and this was reaffirmed in the Central Bank's 2018 report (the 2018 report) entitled 'Behaviour and Culture of the Irish Retail Banks',⁸ which was requested by the Minister for Finance under [section 6A](#) of the *Central Bank Act 1942*. The Report found that these cultural failings were the reason that the now

² Gráinne McEvoy, Director of Consumer Protection, Central Bank of Ireland, '[Building a Consumer Focused Culture – What the Central Bank Expects of Leaders](#)', *Press Release*, 10 October 2018.

³ Central Bank of Ireland, '[Enforcement Action: The Governor and Company of the Bank of Ireland reprimanded and fined €100,520,000 by the Central Bank of Ireland for regulatory breaches affecting tracker mortgage customers](#)', *Press Release*, 29 September 2022.

⁴ Ibid (emphasis added).

⁵ Central Bank of Ireland, '[Central Bank Refers Administrative Sanctions Procedure Case to Inquiry in Respect of a Person Formerly Concerned in the Management of permanent tsb plc.](#)', *Press Release*, 10 November 2021.

⁶ Central Bank of Ireland, '[Inquiry Hearing: Permanent tsb p.l.c. \(PTSB\)](#)', Legal Notices – Inquiry Hearings.

⁷ Commission of Investigation into the Banking Sector in Ireland (2011) '[Misjudging Risk: Causes of the Systemic Banking Crisis in Ireland](#)'.

⁸ Central Bank of Ireland, '[Behaviour and Culture of the Irish Retail Banks](#)', July 2018.

concluded Tracker Mortgage Examination was undertaken, and along with “poor systems, weak internal controls and poor governance, caused detrimental and in some cases devastating impacts on consumers.”⁹

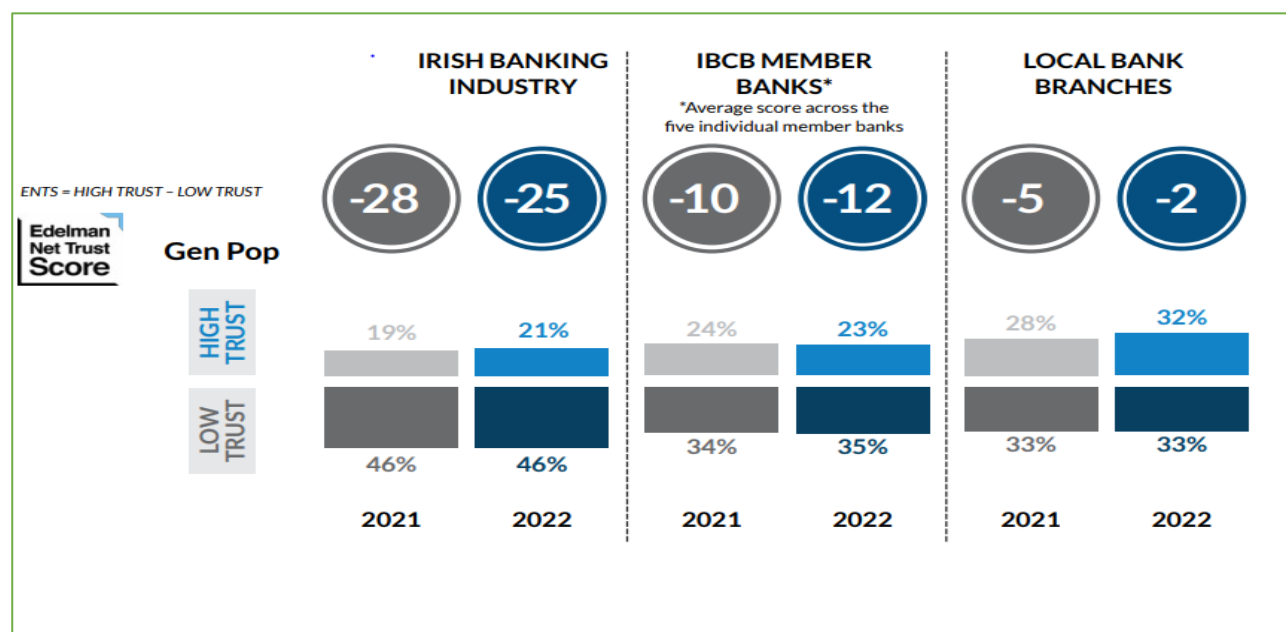
On foot of the findings in the 2018 Report, the 2020 Programme for Government set out several commitments in relation to the banking sector. These included reforms to the current system, including explicitly stating that it would “[i]ntroduce the Senior Executive Accountability Regime to deliver heightened accountability with the banking system.”¹⁰ This is explored in further detail in the section on the Regulatory Impact Analysis (RIA) below.

Public trust in Banks

The Irish Banking Culture Board (IBCB) is an independent industry initiative which was established in April 2019 and is funded by the five retail banks in Ireland (Allied Irish Banks, Bank of Ireland, KBC Bank Ireland, Permanent TSB & Ulster Bank). The purpose of IBCB is to work with member banks to build trustworthiness in order to assist the industry in regaining public trust. The Board is independent with a non-banking majority, whose members are drawn from across Irish society.¹¹

The IBCB on 11 July 2022 published the results of its éist 2022 survey, the second survey in the series, finding that trust amongst the Irish public in banks remains low although stable. Figure 1 below provides a visual representation of the public’s trust in banks comparing 2021 and 2022.

Figure 1: Irish Banking Sector Trust Landscape



Source: 2022 Public Trust in Banking Survey, p.29

⁹ Central Bank of Ireland, ‘Behaviour and Culture of the Irish Retail Banks’, July 2018, p.1.

¹⁰ Programme for Government: Our Shared Future, p. 24.

¹¹ See <https://www.irishbankingcultureboard.ie/vision-and-purpose/>.

Chairman Mr. Justice John Hedigan commenting in relation to the findings of the survey, emphasised the work still to be done in this area:

It is clear from this year's findings that, while there is some evidence of improvement, more work remains to be done to address deeply ingrained feelings of distrust towards the banking sector amongst the Irish public. It is also clear that continued positive behaviour on behalf of retail banks, the evidence of which needs to be both visible to and felt by bank customers, is necessary to further restore public trust in the sector.¹²

Comparable Jurisdictions

The introduction of the SEAR is in line with other countries who already have comparable accountability regimes in place. In the UK, the Senior Managers and Certification Regime (SM&CR) operates "to reduce harm to consumers and strengthen market integrity by making individuals more accountable for their conduct and competence".¹³ It was introduced on foot of recommendations from a Parliamentary Commission for Banking Standards (PCBS) including a new accountability framework focused on senior management. Both the Financial Conduct Authority (FCA) and Prudential Regulatory Authority (PRA) administer the regime.

The FCA describe the aims of the regime in the following terms:

the SM&CR aims to:

- encourage a culture of staff at all levels taking personal responsibility for their actions
- make sure firms and staff clearly understand and can demonstrate where responsibility lies¹⁴

Similarly in Australia, the Banking Executive Accountability Regime (BEAR) was introduced on 19 October 2017, through the [Treasury Laws Amendment \(Banking Executive Accountability and Related Measures\) Bill 2017](#). It is administered by the Australian Prudential Regulation Authority (APRA) and sets out the accountability obligations for authorised deposit-taking institutions (ADIs) and their senior executives and directors.¹⁵ Both the UK and Australia have carried out evaluations of their regimes and both found positive impacts for culture and governance. It also noted that challenges were not experienced when trying to attract senior staff to the sector.¹⁶

Previous legislation related to the current Bill

- [Central Bank \(Supervision and Enforcement\) Act 2013](#) (2013 Act);
- [Central Bank Reform Act 2010](#) (2010 Act); and

¹² Irish Banking Culture Board, '[Irish Banking Culture Board publishes 2022 éist Report on Public Trust in Banking](#)', Press Release, 11 July 2022.

¹³ Financial Conduct Authority, [Senior Managers and Certification Regime](#), Information Page.

¹⁴ Ibid.

¹⁵ Australian Prudential Regulation Authority '[Banking Executive Accountability Regime](#)'.

¹⁶ Grant Thornton, '[Impact of International Accountability Regimes](#)' 11 July 2022.

- [Central Bank Act 1942](#) (1942 Act).

Regulatory Impact Analysis (RIA)

The Department of Finance published its Regulatory Impact Analysis¹⁷ on 27 July 2021, setting out two potential policy options regarding an individual accountability framework within the financial services sector.

Option 1 involved taking no action and this was discounted on the basis that it would maintain the current regulatory approach which the Central Bank had shown required improvement in their 2018 report, '[Behaviour and Culture of the Irish Retail Banks](#)'¹⁸. Also, the commitment to introduce a Senior Executive Accountability Regime (SEAR), which was made in the Programme for Government would not be fulfilled and the practical legal changes needed to introduce individual accountability could not be achieved. Improved public trust and customer outcomes would also not be met.

Option 2 was the preferred option and involves the implementation of the SEAR, which the RIA noted "will place obligations on certain customer-facing firms and senior individuals within them to set out clearly where responsibility and decision-making lies."¹⁹

The purpose of the introduction of the SEAR, the RIA notes:

is to build on 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.

Specifically, the legislation intends to do the following:

- 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.

¹⁷ Department of Finance, '[Central Bank \(Individual Accountability Framework\) Bill 2021 – Regulatory Impact Analysis](#)', July 2021.

¹⁸ Central Bank of Ireland, '[Behaviour and Culture of the Irish Retail Banks](#)', July 2018.

¹⁹ Department of Finance, '[Central Bank \(Individual Accountability Framework\) Bill 2021 – Regulatory Impact Analysis](#)', July 2021, p.3.

- Improve governance and culture across the financial sector.²⁰

Pre-legislative scrutiny of the General Scheme of the Bill

The General Scheme of the Bill was provided to the Joint Committee on Finance, Public Expenditure and Reform and Taoiseach (the Committee) for decision on whether the Committee wished to undertake pre-legislative scrutiny in September 2021. In November 2021, the Committee held meetings with the Central Bank and the Minister for Finance. It also sought written submissions from the Banking and Payments Federation of Ireland (BPFi) and the Irish Banking Culture Board (IBCB).

The Committee recognised that the General Scheme had originated in the Central Bank's 2018 report on [Behaviour and Culture of the Irish Retail Banks](#) referred to in the previous section. That Report had found significant cultural failings along with poor governance and processes which had a devastating impact on consumers. In response to the findings of the 2018 Report, the Government made a commitment in the 2020 Programme for Government to introduce a SEAR to increase accountability and enhance governance processes along with building a more positive culture.

The General Scheme contains 41 heads and is divided into 6 parts.

Part 1 – General Provisions

Part 2 – Senior Executive Accountability Regime

Part 3 – Conduct Standards

Part 4 – Fitness & Probity Regime

Part 5 – Enforcement Investigations & Sanctions

Part 6 – Miscellaneous Provisions

The Committee made 4 key recommendations which are set out in detail in the table below, along with observations from the Department in response. The recommendations focus on SEAR, specifically in relation to documenting individual accountability via responsibility maps and the scope in terms of which firms SEAR applies to.

L&RS traffic light analysis of PLS recommendations versus published Bill

As part of the Bill Digest process, the L&RS compares the recommendations made in the PLS report with their inclusion, partial or otherwise, in the subsequent Bill. To do this, a traffic light system is used by the L&RS, indicating whether a key issue is accepted and reflected in the Bill, whether a consistent or unclear approach is used, or whether the recommendation has not been

²⁰ Department of Finance, '[Central Bank \(Individual Accountability Framework\) Bill 2021 – Regulatory Impact Analysis](#)', July 2021, p.3.

accepted or is not reflected in the Bill. This traffic light approach represents the L&RS' own, independent analysis of the Bill.

The L&RS is grateful to the officials in the Department of Finance for providing their assessment of the actions taken and comments in relation to the PLS recommendations, which are replicated in the right-hand column of the table. In relation to this Bill, it should be noted that some of the recommendations relate to post enactment considerations regarding actions to be taken by the Central Bank. This should be borne in mind when considering the traffic light analysis.

Table 3 Key to traffic light dashboard comparing the Bill as published with Committee PLS recommendations.







L&RS categorisation of the Department's response in the Bill to the Committee's key issue	Traffic light dashboard used in Table 4 to highlight impact of the Committee's PLS conclusion
Key issue has clearly been accepted and is reflected in the Bill.	
The Bill may be described as adopting an approach consistent with the key issue or the impact of the key issue is unclear.	
Key issue has not been accepted or implemented in the Bill.	


Table 4 Traffic light dashboard comparing the Bill as published with Committee PLS recommendations.

Recommendations as per Committee report	Whether addressed (either in whole or in part) in the Bill
1. The Committee recommends that the Central Bank report on the possible inclusion in the SEAR of the entities currently proposed to be excluded (credit unions, reinsurance/captive reinsurance undertakings and Insurance Special Purpose Vehicles) within one year of commencement of the Act.	 <p>This recommendation refers to consideration post-enactment by the Central Bank to extend the Senior Executive Accountability Regime (SEAR) to sectors other than those already agreed by the Minister for Finance for the purposes of the initial rollout of SEAR.</p> <p>The Bill provides the Central Bank with the power to introduce the Senior Executive Accountability Regime (SEAR) by way of a regulation-making power under section 48 of the</p>

Recommendations as per Committee report		Whether addressed (either in whole or in part) in the Bill
		<p>Central Bank (Supervision and Enforcement) Act 2013. The sectors to which SEAR will apply will be specified in the regulations and the Central Bank will be required to have regard to the provisions of Part 8 of that Act when making the regulations, including consulting with the Minister for Finance.</p> <p>The initial scope of SEAR, as proposed by the Bank, was developed on a proportionate basis adopting a risk-based approach to prudential, consumer and conduct risks and has been agreed by the Minister to apply to those in management roles within:</p> <ul style="list-style-type: none"> • Credit institutions (excluding credit unions); • Insurance undertakings (excluding reinsurance undertakings, captive (re)insurance undertakings and Insurance Special Purpose Vehicles); • Investment firms which underwrite on a firm commitment basis and/or deal on own account and/or are authorised to hold client monies/assets; and • Third country branches of the above. <p>Consideration may be given to extending the roll out of SEAR to other entities following implementation of the legislation. Given the complexity of the</p>

Recommendations as per Committee report		Whether addressed (either in whole or in part) in the Bill
		<p>Individual Accountability Framework, including SEAR, it is likely that there will be lessons learned from the initial roll out and, as such, it is envisaged that it would be optimal to revise the SEAR requirements/guidance by the Central Bank in light of those lessons and in advance of extending the regime to other firms/sectors.</p> <p>The Central Bank has committed to reporting to the Committee within one year of commencement of the Act in terms of a plan of approach in relation to the possible phased extension of SEAR to other firms/sectors.</p> <p>The provisions of Part 8 of the 2013 Central Bank (Supervision and Enforcement) Act (sections 49 to 51), with regard to consultation before making Regulations, the agreement of the Minister and the laying of regulations before the houses of the Oireachtas, will apply to the further extension of the regime by way of Central Bank Regulations issued under section 48.</p>
<p>2. The Committee recommends that the Department should clarify if certain payment gateways are to be excluded from the SEAR.</p>		<p>It is understood that the term “payment gateways” refers to payment institutions and e-money institutions. These institutions have not been included in the initial phase of SEAR but, as with other sectors, may be brought within the scope of SEAR in the future by means</p>

Recommendations as per Committee report		Whether addressed (either in whole or in part) in the Bill
		of Central Bank Regulations issued under Section 48 of the 2013 Central Bank (Supervision and Enforcement) Act. As previously stated, there may be consideration of the further roll out of SEAR to other entities following implementation of the legislation.
<p>3. The Committee recommends that, upon conclusion of the extensive consultation exercise with the financial services sector proposed, the Central Bank reports back to the Committee with any revisions or changes to the scheme based on the consultation.</p>		<p>This recommendation refers to the proposed public consultation by the Central Bank with the financial services sector post-enactment.</p> <p>Section 6 amends the Act of 2010 by inserting a new Part 3A which provides, in section 53F Guidelines on conduct standards, that the Bank shall prepare, in such form and manner as it considers appropriate, guidelines for the purpose of providing practical guidance for persons to whom section 53B(1) or (2) Duty to take steps to meet conduct standards applies.</p> <p>Section 65 amends section 33BD of the Act of 1942 to provide that the Bank may prescribe guidelines in relation to the determination of appropriate sanctions and monetary penalties to be imposed under Part IIIC of that Act.</p> <p>The Central Bank has indicated, that following enactment of the legislation, it will issue a comprehensive public consultation paper for comment by all stakeholders. As part of the consultative process, the Bank</p>

Recommendations as per Committee report		Whether addressed (either in whole or in part) in the Bill
		<p>will consider all comments received, update the guidance and regulations where appropriate and issue final guidance and regulations. In addition, the 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.</p> <p>The Bank has committed to sharing the final documents and feedback statement with the Committee which will outline any revisions post consultation.</p>
<p>4. The Committee recommends that the Department clarify the intended meaning of 'third country branches' of the RFSPs included in the SEAR.</p>		<p>'Third country branches' (unlike subsidiaries) are not separate legal entities for regulatory purposes.</p> <p>'Incoming' third country branches are any branches of third country (i.e. non EEA) regulated firms that are established in Ireland. To ensure a level playing field in this jurisdiction, it is proposed to apply SEAR to such incoming third country branches in full.</p> <p>For 'outgoing' branches (whether established in the EEA or a third country), the ultimate responsibility for the supervision of a branch of an Irish authorised institution lies with the Central Bank of Ireland. As such, and</p>

Recommendations as per Committee report		Whether addressed (either in whole or in part) in the Bill
		aligned to the application of the Fitness and Probity Regime to outgoing third country branches, it is proposed that SEAR will apply to those performing a pre-approval controlled function, (such as branch managers and other senior executives, which may include for example the Head of Material Business Line) located within a branch of an Irish entity. In essence, this means that SEAR will introduce additional requirements for outgoing branches, relating to the Statements of Responsibilities for such senior executives, the associated Duty of Responsibility and the Responsibility Map.

Principal provisions of the Bill

This section of the Bill Digest examines the key provisions of the Bill, which comprises Part 2, 3 and 4 of the Bill. It does not examine each provision of the Bill, instead focusing on the most significant ones, that introduce important reforms to the financial services industry.

Individual Accountability and Standards

Part 2 contains three Chapters and deals with individual accountability and standards.

Chapter 1 encompassing sections 3 and 4, introduces the new SEAR into the current legislation, setting out clearly the duties and standards to be complied with and where responsibility and decision-making lies within the RFSP.

Section 3 introduces a new regulation -making power for the Central Bank which provides for arrangements that RFSPs must adopt in relation to the allocation of responsibilities and compliance with obligations under financial services legislation. These are:

- RFSP to assign responsibility to PCF holder for aspects of affairs set out in regulations under subsection 2(bb)
- ensure proper conduct of affairs by assigning responsibility to a PCF holder for aspects of affairs not otherwise covered by already assigned responsibility;
- arrangements for the RFSP to monitor the performance of pre-approval controlled functions relevant to it;

- arrangements that clarify the management structures and identifies the lines of authority and accountability, and specifies roles and responsibilities, in relation to the management of PCF holders and of other persons by PCF holders;
- arrangements that clarify the governance structure showing the relationship between RFSPs and PCF holders with those in the ownership or control of the RFSP or representing its customers or other stakeholders;
- arrangements set out under this subsection to be documented.

Section 4 provides that regulations made under [section 48](#) of the 2013 Act can apply to a specified class or classes of pre-approval controlled functions and can include different provisions in relation to different classes of pre-approval controlled functions.

Chapter 2 encompasses section 5 of the Bill which inserts a new Part 2A into the [Act of 2010](#) setting out the business standards which must be adhered to. These apply to all RFSPs, although Central Bank has the power to make regulations that may prescribe different provisions in respect of different classes of RFSP. The standards include to:

- act in the best interests of customers and of the integrity of the market;
- act honestly, fairly, and professionally;
- act with due skill, care, and diligence;
- not mislead a customer as to the advantages or disadvantages of any financial service;
- maintain adequate financial resources;
- control and manage its affairs and systems sustainably, responsibly, and in a sound and prudent manner;
- prevent, or identify and appropriately manage, conflicts of interest;
- arrange adequate protection for assets held on behalf of a customer;
- engage and cooperate in good faith and without delay with regulators; and
- promptly disclose to the Central Bank any matter relating to the RFSP of which the Bank would reasonably expect notice.

Chapter 3 encompasses Section 6 which inserts a new Part 3A into the Act of 2010 outlining the details of the **duty of responsibility and conduct standards (the SEAR)**. It contains 9 subsections 53A – 53I as follows:

53A Interpretation - provides for the definition of ‘common conduct standards’ and ‘additional conduct standards’.

53B Duty of responsibility- it provides the exact parameters of the duty of responsibility including what constitutes:

inherent responsibility for a part of the affairs of a RFSP occurs if the person performs a pre-approval controlled function in relation to the RFSP and that part of its affairs is specified in relation to that function by regulations made under the Act of 2013.

allocated responsibility for a part of the affairs of a RFSP occurs where a person performs a pre-approval controlled function in relation to the RFSP and responsibility

has been allocated to that person under arrangements in accordance with regulations made under section 48(2)(bc) of the Act of 2013.

53C Duty to take steps to meet conduct standards- this provides that a person who performs a controlled function in relation to a RFSP must take any reasonable steps to ensure that **common conduct standards and additional conduct standards** are met. The duty in relation to additional conduct standards extends to any other function by which the person may exercise a significant influence on the conduct of RFSP's affairs.

53D Relevant circumstances for purposes of sections 53B and 53C- this provides for matters to be considered when determining reasonable steps to be taken to ensure conduct standards are met. These include the nature of the business of the RFSP, including its scale and complexity and the level of knowledge and experience of the person.

53E Common conduct standards- this sets out exactly what the common conduct standards are as follows:

- (a) that the person acts with honesty and integrity, including—
 - (i) having regard to the legitimate interests of the regulated financial service provider, its staff, customers and other persons with whom it engages,
 - (ii) operating without bias and preventing, or identifying and appropriately managing, conflicts of interest,
 - (iii) not exerting pressure or influence on a customer so as to limit his or her ability to make an informed choice in relation to any financial service,
 - (iv) not misusing or misappropriating any assets or information of the regulated financial service provider or its customers, and
 - (v) reporting appropriately, and not impeding others from reporting, to the management of the regulated financial service provider—
 - (I) information relevant to, or giving rise to a suspicion of, the commission of a prescribed contravention or contravention of any other legal obligation or standard imposed on the regulated financial service provider, and
 - (II) any matter otherwise adversely affecting the activities or interests of customers, the regulated financial service provider, its related undertakings, or the financial system in the State,
- (b) that the person acts with due skill, care and diligence, including—
 - (i) having appropriate knowledge of the business activities of the regulated financial service provider relevant to the controlled function, and the associated risks of those activities,
 - (ii) having appropriate knowledge of the legal and regulatory framework, including any legal obligation or standard imposed on the regulated financial service provider, relevant to the controlled function,
 - (iii) operating in compliance with the systems and controls, processes, policies and procedures of the regulated financial service provider and any legal obligation or standard imposed

- on the regulated financial service provider,
 - (iv) acting without detriment to customers, the regulated financial service provider, its related undertakings, or the financial system in the State,
 - (v) ensuring that any communication, including any record, provided to a customer or other person is clear, accurate, up to date and not misleading,
 - (vi) acting appropriately in any decision-making, including collective decision-making, ensuring decisions are properly informed and exercising sound judgement, and
 - (vii) monitoring the performance of any delegated tasks and ensuring that those tasks are appropriately performed,
- (c) that the person cooperates in good faith and without delay with the Bank, and with authorities that perform functions in a jurisdiction other than the State that are comparable to one or more of the functions performed by the Bank under financial services legislation, including—
- (i) responding to requests and requirements under financial services legislation in an open and timely manner,
 - (ii) disclosing information or records when required to do so under financial services legislation,
 - (iii) attending meetings and interviews when required to do so under financial services legislation,
 - (iv) not providing false, inaccurate or misleading information, records or explanations,
 - (v) not destroying, hiding or putting beyond reach information or records that it is reasonable for the person to expect to be required to be disclosed under financial services legislation, and
 - (vi) not engaging in evasive, misleading or obstructive conduct,
- (d) that the person acts in the best interests of customers and treats them fairly and professionally, including—
- (i) ensuring that customers are informed in a clear manner of relevant information relating to financial services of which they ought to be aware, and not impeding the provision of relevant information to customers,
 - (ii) communicating with customers in a timely manner having regard to the urgency of any matter and the time required by the customer to consider the relevant information,
 - (iii) assessing the needs and circumstances of customers, including their level of knowledge and experience of financial services, their financial circumstances and the range of options available to them, and ensuring that any advice or recommendation provided to customers is appropriate and tailored to their needs and circumstances,

- (iv) ensuring that customers are not misled as to the advantages of any financial service,
- (v) acknowledging and seeking to resolve any complaints received from customers,
- (vi) resolving errors or mistakes affecting customers, and disclosing errors or mistakes to the customers affected in a timely manner,
- and
- (vii) not acting in a manner that is unfair to customers,
- and
- (e) that the person operates in compliance with standards of market conduct and trading venue rules to which the regulated financial service provider is subject by law and any market codes.

53F Additional conduct standards- this sets out exactly what the additional conduct standards as follows:

- (a) that the business of the regulated financial service provider is controlled effectively,
- (b) that the business of the regulated financial service provider is conducted in accordance with its obligations under financial services legislation,
- (c) that any delegated tasks are assigned to an appropriate person with effective oversight, and
- (d) that any information of which the Bank would reasonably expect notice in respect of the business of the regulated financial service provider is disclosed promptly and appropriately to the Bank, including information relevant to, or giving rise to a suspicion or expectation of, any of the following:
 - (i) commission of an offence by the regulated financial service provider or a person performing a controlled function in relation to it;
 - (ii) commission of a prescribed contravention or any other breach of obligations under financial services legislation by the regulated financial service provider or a person performing a controlled function in relation to it;
 - (iii) concealment or deliberate destruction of evidence relating to a matter referred to in subparagraph (i) or (ii);
 - (iv) provision of false or misleading information to the Bank relating to a matter referred to in subparagraph (i) or (ii);
 - (v) obstruction or impeding of an investigation relating to a matter referred to in subparagraph (i) or (ii);
 - (vi) commencement of legal proceedings by or against the regulated financial service provider arising from its obligations under financial services legislation;
 - (vii) commencement of legal proceedings against the regulated financial service provider which may impact on its ability to

- continue to trade;
- (viii) anything that may otherwise interfere significantly with the operation of the regulated financial service provider or its compliance with its obligations under financial services legislation;
- (ix) a decision by the regulated financial service provider to cease to provide financial services of a particular description.

53G Guidelines on conduct standards – this provides that guidelines must be prepared by the Bank to provide practical guidance to those persons subject to the common conduct and additional conduct standards. Those persons must have regard to the guidelines and the guidelines must be published by notice in *Irish Oifigúil* and on a Bank's website.

53H Notification and training for persons subject to conduct standards – this provides that a RFSP must, to ensure compliance with both common and additional conduct standards, notify and provide training to certain persons, i.e. to those performing a controlled function or a pre-approval controlled function/function exerting significant influence on a RFSP. The Bank must prepare guidelines to provide practical guidance in relation to notifications and training and these must be published by a notice in *Irish Oifigúil* and on a Bank's website.

53I Limitation of requirements to produce documents, give information or answer questions – this provides for limits on

- A person being compelled to produce a document that a court could not compel them to produce;
- A person being compelled to provide information to give information that a court could not compel them to produce;
- A person being compelled to answer a question that a court could not compel them to answer
- A person doing anything that could incriminate them.

Fitness and Probity Regime

Part 3 of the Bill will make a series of amendments to Part 3 of the [Act of 2010](#) in relation to the Central Bank's Fitness and Probity Regime, encompassing section 7 to 36 of the Bill. It extends the application of the regime to certain categories of holding company and persons performing controlled functions in relation to them. It will also make changes to the operation of the regime to make it more efficient and effective and to ensure that it conforms to the required standards of fairness in the administration of justice, in light of the decision of the Supreme Court in the case of [Zalewski v. An Adjudication Officer and Others \[2021\] IESC 24](#).

Section 10 relates to the application of the fitness and probity regime, providing for the substitution of a new section 21 into the [Act of 2010](#). Essentially, it provides that an RFSP or holding company must not allow a person to perform a controlled function in relation to it unless it has certified that it is satisfied that the person complies with any standard of fitness and probity issued by the Central Bank under [section 50](#), that the RFSP or holding company shall revoke such certification if it ceases to be so satisfied; and that the Bank may make regulations as to these matters and to the reporting to the Bank in relation to obligations under this section.

Administrative Sanctions Procedure

Part 4 contains four Chapters, encompassing sections 37 to 79 and involves a series of amendments to the [Act of 1942](#), in particular to [Part IIIC](#) of that Act which deals with the Central Bank's Administrative Sanctions Procedure. It introduces changes to the operation of the Procedure to clarify the processes involved, and to ensure that it conforms to the required standards of fairness in the administration of justice, in light of the decision of the Supreme Court in the case of [Zalewski v. An Adjudication Officer and Others \[2021\] IESC 24](#).

Section 43 amends Chapter 2 of [Part IIIC](#) of the Act of 1942 by inserting new sections 33ANI, 33ANJ, 33ANK in into the Act of 1942 as follows:

“Interpretation (Chapter 2)

33ANI. In this Chapter—

- ‘investigation’ means an investigation referred to in section 33ANJ(1);
- ‘responsible authorised officer’ means the authorised officer responsible for an investigation.

Investigation of suspected prescribed contravention

33ANJ. (1) As soon as practicable after a decision is made by the Bank to investigate—

- (a) whether a person is committing or has committed one or more prescribed contraventions, or
- (b) whether a person is participating or has participated, while performing a relevant controlled function, in the commission by a regulated financial service provider of one or more prescribed contraventions, the responsible authorised officer shall give the person notice in writing of the investigation.

(2) The responsible authorised officer shall give the person to whom an investigation relates an amended notice in writing of the investigation as soon as practicable after any of the following events:

- (a) there is a change in the investigation of the commission of or participation in a prescribed contravention such that a statement included under subsection (3)(a) is no longer accurate;
- (b) the investigation is extended to include investigation of the commission of or participation in another prescribed contravention;
- (c) investigation of the commission of or participation in a prescribed contravention is discontinued, while continuing in relation to another prescribed contravention.

(3) A notice under subsection (1) or (2) shall include—

- (a) a statement identifying each prescribed contravention, and the conduct of the person concerned, to which the investigation for the time being relates,
- (b) a copy of such material relating to the matters referred to in paragraph (a) as the responsible authorised officer considers appropriate, and
- (c) a statement that a response to the contents of the notice will be taken into account if made by the person in writing within the

period stated in the notice or such longer period as the responsible authorised officer may allow.

(4) The responsible authorised officer shall take such steps as he or she considers reasonable to keep the person to whom an investigation relates informed as to the progress of the investigation.

(5) If an investigation is discontinued in respect of all prescribed contraventions, the responsible authorised officer shall as soon as practicable give the person to whom the investigation relates notice in writing which—

- (a) states that the investigation has been discontinued, and
- (b) gives one or more of the following reasons for the discontinuance:
 - (i) that the Bank no longer has reasonable grounds to suspect the person's commission of or participation in a prescribed contravention, so far as included in the investigation immediately before the discontinuance;
 - (ii) that the matters included in the investigation immediately before the discontinuance have been resolved;
 - (iii) that the investigation has been discontinued for reasons of resources;
 - (iv) that the investigation has been discontinued for policy reasons;
 - (v) that the investigation has been discontinued for reasons of any other description stated in the notice.

(6) If investigation of the commission of or participation in a prescribed contravention is discontinued while continuing in relation to another prescribed contravention, the responsible authorised officer and the Bank are not required to give a reason for the discontinuance.

Investigation report

33ANK.(1) When an investigation is completed, the responsible authorised officer shall, after considering—

- (a) the notice given under section 33ANJ(1) and any notice given under section 33ANJ(2),
 - (b) anything relevant obtained in the exercise of powers conferred by Chapter 3 of Part 3 of the Central Bank (Supervision and Enforcement) Act 2013 and any other relevant information or evidence gathered or received by the authorised officer in the course of the investigation, and
 - (c) any response made by the person to whom the investigation relates in accordance with a statement referred to in paragraph (c) of section 33ANJ(3), and any other relevant submission or statement made by the person in the course of the investigation,
- as soon as practicable prepare a draft report of the investigation.

(2) The responsible authorised officer shall, as soon as practicable after preparing the draft report, give the person to whom the investigation relates—

- (a) a copy of the draft report,
 - (b) a copy of this section, and
 - (c) a notice in writing stating that the person may make submissions in writing to the responsible authorised officer on the draft report within the period stated in the notice, which shall be—
 - (i) 7 days from the date on which the notice is served, or
 - (ii) such longer period as the authorised officer considers necessary to give the person an opportunity to respond.
- (3) The responsible authorised officer shall, as soon as practicable after the end of the period referred to in subsection (2)(c), and having considered any submissions made in accordance with that paragraph, make any revisions to the draft report that in the opinion of the authorised officer are warranted, and finalise the report.
- (4) The responsible authorised officer shall not make any recommendation, or express any opinion, in a draft report under subsection (1) or in a final report under subsection (3), as to—
 - (a) whether any sanction (or, if so, what sanction) should be imposed under section 33AQ(3) if the Bank makes a finding that the person is committing or has committed a prescribed contravention, or
 - (b) whether any sanction (or, if so, what sanction) should be imposed under section 33AQ(5) if the Bank makes a finding that the person is participating or has participated, while performing a relevant controlled function, in the commission of a prescribed contravention.
- (5) The responsible authorised officer shall, as soon as practicable after the report has been finalised under subsection (3), provide to the Bank and to the person to whom the investigation relates—
 - (a) a copy of the final report, and
 - (b) a copy of any submissions made in accordance with subsection (2)(c).
- (6) A draft report and final report under this section shall include any material that in the opinion of the responsible authorised officer is relevant to the consideration of the report by the Bank under section 33AO(1) or (2) or 33AR(2) or (4).
- (7) A person who receives a copy of a final report or any submissions under subsection (5) shall not, without the prior authorisation of the Bank, disclose the existence of or the content of the report or the submissions to any person other than for the purpose of obtaining legal advice.
- (8) A person who without reasonable excuse contravenes subsection (7) commits an offence and is liable on summary conviction to a class A fine or imprisonment for a term not exceeding 6 months or both.”.

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