



Society of Actuaries in Ireland

Regulatory Working Group

Newsletter

July 2024

Introduction

Dear Member

This newsletter is the first publication from the cross practice regulatory working group. The core objective of this newly established working group is to create and distribute a cross-practice newsletter to all committees and members of the Society of Actuaries in Ireland (SAI). This newsletter provides a high-level summary of regulatory developments, links to more detailed information, and identifies the relevant committees or audiences that the regulation is more specifically applicable to. Detailed analyses are not conducted by this working group but rather the newsletter aims to highlight to members material that might be of interest and which they may wish to explore further.

This newsletter is sub divided into the following headings and has an effective date June 2024:.

- Pensions
- General Insurance
- Sustainability
- Operational Resilience
- Solvency II
- Conduct and Customer
- Artificial Intelligence

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It does not constitute advice and no reliance should be placed on it. The Society will make reasonable endeavors to ensure that the information is correct. However, the Society disclaims all liability and responsibility for any party's reliance on the information or for any action taken on foot of the information. Should you believe that any information is incorrect, please contact the Society at info@actuaries.ie.

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Pensions

The Automatic Enrolment Savings System Bill

The [Automatic Enrolment Retirement Savings System Bill 2024](#) (“the Bill”) was published on 5 April 2024. Its main purpose is to address the current pension coverage gap by introducing a new retirement savings system for approximately 800,000 eligible employees who are not currently covered by a qualifying pension scheme.

As of late June, the Bill has completed all five stages in Dail Eireann and all five stages in Seanad Eireann. It is anticipated to become law in July 2024, with a target commencement date of 1 January 2025.

A [Bill Digest](#) has been published by the Library and Research Service, providing background information and summarising the principal provisions of the Bill.

The Automatic Enrolment (AE) minimum standards will be a key piece of additional legislation as they will establish the criteria for measuring whether an occupational pension plan is “at least as favourable as” the Central AE System and therefore qualifies as a qualifying pension scheme. These standards will be drafted over the coming years and will be in force no later than the commencement of Year 7 following the introduction of AE.

In addition to our [response](#) to the Draft Heads of the Bill, the Society has engaged with the Department to offer assistance and feedback on various aspects of the Central AE System’s design. The Society has also established a working group focused on Auto Enrolment which is expected to be active for several years as the initial legislation comes into force and the forthcoming AE Minimum standards are drafted and enacted.

General Insurance

Delaney v The Personal Injuries Assessment Board

The Personal Injury Guidelines were adopted by the Judicial Council in March 2021. The guidelines aimed to standardise awards for common injuries and in many cases resulted in awards significantly lower than those previously guided by the Book of Quantum. The recent Supreme Court case of “Delaney v The Personal Injuries Assessment Board” challenged the constitutionality of these new guidelines.

In April 2024, the Supreme Court ruled in favour of the Personal Injury Assessment Board (“PIAB”), confirming the constitutionality of the Personal Injury Guidelines. The judgement was welcomed by Insurance Ireland and Insurers alike, as they continue to value injuries based on the new guidelines.

Despite the ruling, there remains some uncertainty over the precise implementation of the guidelines, assessment of damages that involve multiple injuries, and the review of the guidelines which was originally scheduled for April 2024.

The background behind the case in question is below:

- **Background:** The appellant fell on a public footpath in County Waterford in April 2019, resulting in a grazed knee and a fracture of their ankle.

- **Assessment Discrepancy:** Based on the old Book of Quantum, their injuries were estimated to be in the range of €18,000 to €34,000, whereas PIAB’s assessment in May 2021 used the Personal Injury Guidelines estimating €3,000.
- **High Court Decision:** The appellant challenged the High Court decision which held that the reduction in damages was consistent with these new guidelines.
- **Supreme Court Review:** This decision was appealed to the Supreme Court. The Supreme Court’s review centred on the legal basis for the Personal Injury Guidelines and their impact on personal injury claims. Key questions included:
 - whether the Guidelines were properly established;
 - whether the Guidelines adequately considered various injury types; and
 - whether the Guidelines aligned with constitutional rights to compensation.
- **Supreme Court Judgement:** In April 2024, the Supreme court ruled in favour of the Personal Injury Guidelines.

Climate Risk and Sustainable Finance Forum

The Climate Risk and Sustainable Finance Forum (Climate Forum) is a consultative forum established by the Central Bank of Ireland (CBI) in June 2022. It aims to build a shared approach between the financial sector and CBI in understanding and managing the financial risks and opportunities posed by climate change. The Climate Forum participants include representatives from across the financial services sector including representatives from the SAI. It has recently published reports from its Capacity Building Working Group and the Risk Management Working Group.

The [Capacity Building Working Group](#) report builds on a 2023 survey which was sent to many companies across the Financial Sector in Ireland. The key items identified by the survey included:

- A wide range of sustainability maturity levels,
- Strong reliance on Groups for ESG support,
- Upskilling was a key area for improvement, and
- A limited awareness of external support.

The report proposes a number of recommended actions in building awareness and upskilling financial services employees in this area. The SAI is listed as one of the parties tasked with taking the lead in “Awareness raising at industry level” and articulating a “New Industry Narrative”.

The [Risk Management Working Group](#) highlighted the following:

- The need for further public/private collaboration,
- The need for increased consumer incentives for green initiatives, and
- Emerging good practices.

EU Sustainability Reporting - Corporate Sustainability Reporting Directive (“CSRD”)

Effective from 5 January 2023, this [directive](#) ensures companies are reporting on their alignment to the EU Taxonomy in relation to their **sustainability performance**. CSRD is still evolving and so insurers should monitor the space according with their particular circumstances in mind

Who is in Scope?

In broad terms the application of CSRD will first apply to certain companies, including certain non-EU entities, reporting on fiscal years starting 2024, in 2025. The detail on how these companies are determined is set out in the CSRD, as transposed into national legislation. However, as it is an 'amending EU Directive', it requires looking through to other directives, including the Accounting Directive and the Transparency Directive. The CSRD also specifies those companies for which the application is first applied at later dates.

What's Involved?

Companies in scope of CSRD must follow the [Sector-Agnostic European Sustainability Reporting Standards](#) (“ESRS”), or proportionate standards currently being developed for certain companies.

A Double Materiality Assessment (“DMA”), i.e. the financial (an outside-in perspective) and non-financial (an inside-out perspective) impacts, is required to determine which sustainability matters apply to the individual firm.

It is important to note that as of February 2024, the Commission has [postponed the deadline for Sector-Specific ESRS](#), from mid-2024 to mid-2026.

Operational Resilience

Digital Operations Resilience Act (DORA)

DORA is an EU [regulation](#) that entered into force on 16 January 2023 and will apply from 17 January 2025. It aims to strengthen the financial sectors resilience to IT related incidents and applies to insurers, banks and investment firms. It is intended to ensure that companies and the financial sector as a whole can prevent, adapt, respond to, recover, and learn from operational disruptions.

The four key pillars of DORA are:

- **ICT Risk Management** – sets out key principles and requirements for ICT risk management frameworks.
- **Incident Reporting** – harmonisation of ICT incident classification and reporting with a requirement to report major incidents to the relevant authority.
- **Digital Operational Resilience Testing** – EU wide standards for digital operational resilience testing based on the principle of proportionality.

- **ICT Third Party Risk** – requiring an ICT third party risk strategy, the conduct of due diligence before entering agreements and sets out minimum contractual terms for contracts with crucial third party ICT providers to enable sufficient oversight by the financial entity.

The regulation is supported by a series of technical standards – the [first batch](#) of these were published at the start of this year with the remaining expected on 17 July 2024 .

While there is some overlap between DORA and the [CBI's Guidance on Operational Resilience](#). DORA focusses on IT systems in particular and is more prescriptive. There will also likely be overlap between the requirements of DORA and firm's existing ICT business continuity policies.

Solvency II

Solvency II Directive – Amendments

The European Parliament and the Council reached their conclusion on the amendments to the Solvency II Directive in January 2024. The revised Directive will be mandated to be adopted at a national level. The initial opinion was provided by EIOPA in December 2020 and was followed by the European Commission (EC) formalising its recommendations in September 2021. The amendments include key changes to Pillar I, Pillar II and Pillar III. The Directive is expected to be fully legally approved in 2024 and transposed into national law in 2026 at the earliest.

The key amendments under each Pillar can be summarised in the following table:

Pillar 1	Pillar 2	Pillar 3
<ul style="list-style-type: none">• Extrapolation of the yield curve• SCR interest rate• Risk Margin• Volatility Adjustment• Symmetric Adjustment• Long term equity• Proportionality	<ul style="list-style-type: none">• Supervisory power to restrict or suspend dividend payments• Liquidity risk management plans (LRMPs)• Exposure to climate change risks	<ul style="list-style-type: none">• External audit of SFCR• New reporting deadlines• New structure to SFCR

The amendments likely to have the greatest impact on firms' positions are:

Risk margin – reduces the cost of capital rate from 6% under current approach to 4.75%, and time-dependent factor λ (lambda) introduced to risk margin formula.

Volatility adjustment – introduces components to the calculation to mitigate deficiencies in the current VA application, including the cliff-edge effect.

SCR for interest rate risk – updates existing set of multiplicative shock parameters and introduces an additional set of additive shock parameters to be applied simultaneously.

The [final draft](#) of the Solvency II Directive was issued by the Council of the European Union on 19 January 2024.

Solvency II Directive – Request to EIOPA for technical advice

The European Commission recently sought EIOPA's technical advice on the following aspects of the Solvency II Directive:

- Methodology to be used when classifying undertakings as small and non-complex undertakings (SANCUs);

- Conditions for granting approval for proportionality measures to be used by undertakings not classified as small and non-complex;
- Standard formula capital requirements for direct exposures to qualifying central counterparties (CCPs);
- Standard formula capital requirements for investments in crypto assets.

This technical advice must be delivered to the Commission by 31 January 2025 in relation to the first 3 items above, and by 30 June 2025 in relation to the last item. The documented request, published on 30 April, can be found [here](#).

Insurance Recovery & Resolution Directive (IRRDR)

The European Council and Parliament agreed on a [final compromise text](#) for the IRRDR in January 2024, which is a key output from the Solvency II Review mentioned above. This Directive will lead to the introduction of a new harmonised regime at EU level for resolving insurers and enforcing recovery plans.

The proposal adopts the 'pre-emptive' approach whereby insurance companies must submit plans to the supervisory authorities, which would in turn be given powers to implement resolutions. It sets out the structure of the recovery plan at both an individual and Group level, and also includes a range of resolution tools.

A number of EU states, including Ireland, have domestic recovery and resolution planning requirements already in place, which should ease their transition towards the IRRDR. For the countries that lack such legislation, the IRRDR will address the significant risk that insurer failures pose. The pre-emptive aspect of the recovery planning is the key difference between it and the Solvency II Ladder of Intervention, which requires firms to produce a recovery plan after a SCR or MCR breach has taken place i.e. 'ex post' obligations.

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Solvency II continued

The extent of the requirements for each insurer will differ depending, for example, on the risk profile of the undertaking. National supervisory authorities must ensure that at least 60% of the respective market has a recovery plan in place, with the market coverage level for both the life and non-life markets calculated by the supervisory authority.

The next steps include the adoption of the text by the Parliament's plenary and by the Council. Once adopted, it will be signed by the Council and the Parliament and published in the Official Journal of the European Union. The first set of technical standards (Level 2 texts) must be developed by EIOPA within 18 months of the Directive's publication. Member States will implement the Directive 24 months and 1 day after publication in the Official Journal.

Conduct & Customer

CBI Consumer Protection Code Review

The CBI originally introduced the [Consumer Protection Code](#) in 2006 and revised it in the Consumer Protection Code 2012 which came into effect on 1 January 2012. The CBI is in the process of conducting a comprehensive review of the code. This has culminated in a [consultation paper](#) that was published in March 2024 and closed on 7 June 2024. Following consideration of stakeholder feedback on the proposed changes, the CBI will publish the final regulations in early 2025 followed by a 12 month implementation period.

The CBI aims to deliver an updated and modernised Code that reflects the constantly changing financial environment, to ensure that firms incorporate customers' interests as a central part of decision making in order to deliver positive consumer outcomes. The review aims to enhance consumer protections across the following areas:

- **Digitisation** – Deploy consumer focus in design and implementation of these services.
- **Informing effectively** – Inform customers in a way that supports them to make informed decisions.
- **Mortgage credit and switching** – Support and transparency for customers in switching mortgage and insurance products.
- **Unregulated activities** – Provide clarity to customers on regulatory status and protection they have
- **Frauds and scams** – Protection for customers from evolving frauds and scams.
- **Vulnerability** – Support customers in vulnerable circumstances.
- **Climate risk** – Consider consumer sustainability preferences.

The SAI submitted a [response](#) to the CBI consultation, the key points of this were:

- There are many areas of overlap between the CPC and other EU regulations for example, DORA, IDD, evolving sustainability regulations, etc. Where possible the SAI feels that CPC should not seek to replicate these regulations but to make reference to them where appropriate.

- In the spirit of standardisation and informing effectively, the principles of the CPC should apply consistently to all relevant financial products such as occupational pensions not directly in scope of CPC. It is important that consumers receive similar protection across all financial products.
- Informing consumers effectively suggests that companies may need to adopt a more succinct and targeted approach to consumer communication. This proposal may be at odds with meeting current regulatory requirements, resulting in additional rather than simplified communications. Defining what is 'important' for different consumers and products will be a challenging task.

Individual Accountability Framework (IAF)

The Central Bank's Individual Accountability Framework Act was signed into law on 9 March 2023 and partially commenced on 19 April 2023.

The IAF includes the following pieces of legislation:

- **Senior Executive Accountability Regime (SEAR)** :See SEAR section below for more details.
- **Conduct Standards**: A set of expected standards of conduct which apply to certain individuals (Common Conduct Standards) and senior executives (Additional Conduct Standards) in all regulated firms. These standards went live on 29 December 2023.
- **Enhancements to the current Fitness & Probity (F&P) Regime**: This will include clarifying firm's obligations to proactively certify that individuals carrying out certain specific functions are fit and proper.
- **Amendments to the Administrative Sanctions Procedure (ASP)**: A key change will be the CBI's ability to take enforcement action under the ASP directly against individuals for breaches of their obligations rather than only for their participation in breaches committed by a firm.

The final guidance on the IAF was released in April 2024 and is available to view [here](#).

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Conduct & Customer continued

Senior Executive Accountability Regime (SEAR)

A key element of the IAF is the SEAR. This legislation will initially apply to a defined range of firms, which includes insurance undertakings but excludes reinsurance undertakings and captives. Irish insurers will be required to have all relevant SEAR documentation in place by 1 July 2024.

The SEAR will require in-scope firms to set out clearly and fully where responsibility and decision-making lie within a firm's senior management. There are two key disclosure documents which firms must complete and keep updated post-implementation:

- **Statement of Responsibilities** outlines clearly the responsibilities allocated to each individual in a Pre-Approved Control Function.

- **Management Responsibilities Map** highlights key management and governance arrangements within a firm.

The inclusion of Independent Non-Executive Directors (INEDs) and Non-Executive Directors (NEDs) within the scope of the SEAR framework raised some concerns among affected parties. The CBI have compromised by deferring the implementation of SEAR for INEDs/NEDs until 1 July 2025. This 12-month extension should enable firms to better manage the perceived issues in reconciling the collective responsibility of boards with the new accountability regime.

Following completion of a public consultation and the legislative process, the CBI issued the final [SEAR Regulations](#) in April 2024. The CBI has stated that further guidance will follow in the coming months.

Artificial intelligence

EU AI Act

The [EU Artificial Intelligence Act](#) is the world's first comprehensive AI law and regulates the use of AI intelligence in the EU. The aim of the Act is to ensure better conditions for the development and use of this innovative technology and it adopts a risk-based but prescriptive approach focussed on transparency and responsible usage.

The definition of AI to which the Act applies is broad and is not restricted to generative AI models.

"An AI system is a machine-based system that, for explicit or implicit objectives, infers, from the input it receives, how to generate outputs such as predictions, content, recommendations, or decisions that can influence physical or virtual environments. Different AI systems vary in their levels of autonomy and adaptiveness after deployment."

Source:

<https://www.europarl.europa.eu/topics/en/article/20230601STO93804/eu-ai-act-first-regulation-on-artificial-intelligence>

The AI Act applies to providers, deployers and distributors of AI systems in the EU. The AI Act applies a risk-based approach, which means that different requirements apply in accordance with the level of risk:

- **Unacceptable risk** – AI systems that manipulate behaviour in a harmful way or exploit the vulnerabilities of a group based on their specific characteristics are banned outright.

- **High risk** – Systems that can have a significant impact on the life of a user (e.g. automatic claims processing, credit scoring etc). These systems are subject to stringent obligations and must undergo conformity assessments before being deployed in the EU.
- **Limited risk** – Systems that interact with humans, detect humans or determine a person's categorisation based on biometric data, or produce manipulated content. These systems include chatbots and those used to produce deep fakes and have transparency obligations.
- **Low risk** – These includes spam filters or AI-enabled video games. There are no specific regulatory requirements in relation to such models.

Many of the models used in a financial services context could be considered high risk and thus have to comply with a wide range of technical and governance requirements including data quality, risk mitigation systems, clear documentation and human oversight.

The European Parliament adopted the Act in March 2024 and it will fully apply from March 2026. However, some elements will apply sooner:

- A ban of AI systems posing unacceptable risk will apply six months after the entry into force.
- Codes of practice will apply nine months after entry into force.
- Rules on general purpose AI systems that need to comply with transparency requirements will apply 12 months after the entry into force.