



Economy

Introduction to the Consumer Credit Regime

Proposed legislation



13 July 2023

Gouvernement d'Jèrri

Current legislation...

- Consumer Protection (Unfair Practices) Law 2018 = Trading Standards
 - Unfair commercial practices
 - Aggressive selling techniques
 - Misinforming or misleading people about products and services
- Financial Services Ombudsman (Jersey) Law 2014 = CIFO for complaints re
 - Provision of credit under credit agreements
 - CRAs
 - Debt adjusting, counselling, collecting, administration
- Proceeds of Crime (Jersey) Law 1999
 - AML/CFT/CPF
- Voluntary Code of Practice for Consumer Lending
- Voluntary Code of Practice for Debt Collection





Intention behind proposed regime

- To plug the gap – conduct codes are only voluntary
- Provide regulatory certainty for lenders and ancillary service providers
- Create a level playing field for businesses
- Promote opportunity within the marketplace
- Increase customer choice



What will the proposed law cover?

- **ALL** lending or any business ancillary to lending, that involves consumers, if it is being done “by way of business” unless specifically exempt.
- Includes as “regulated agreements and arrangements”:
 - Credit agreements - unsecured
 - Hire agreements - unsecured
 - Secured lending arrangements e.g., mortgages (Jersey resident’s primary residence)
- Licence required from JFSC to operate = 7 years imprisonment and/or fine if carry out activity without a licence



Examples of unsecured lending:

- Personal loans (including from banks)
- Credit extended by debt collection agencies
- Credit as part of debt-adjusting or debt-administration services
- Car finance (PCPs, balloon finance)
- Peer to peer lending
- Local store cards/credit cards*
- Hire purchase
- Pay day loans
- Overdrafts
- BNPL

*Jersey doesn't currently have any local credit card providers. Credit cards are provided to islanders by providers based in overseas jurisdictions, primarily the UK.



Will not include...

- Agreements with deferred payment mechanisms, e.g.:
 - Club memberships
 - Insurance payments
- Have we caught everything you think we should have?



“Consumers”

- Individuals (natural persons), irrespective of personal wealth or circumstances provided they are acting wholly or mainly outside of their trade, business or profession
- Persons (which may include legal persons) acting by way of business where the person employs less than 10 FTEs and which have a balance sheet or turnover that doesn't exceed £2m (“**micro-enterprise**”)
- **LIMIT** for micro-enterprises = £30,000



Who will be regulated?



Lenders = anyone lending “by way of business” (institutions, businesses + private citizen)



Those who advise, administer or arrange credit and hire agreements and/or mortgages



Credit broking for credit and hire agreements and/or mortgages



Debt related activities:

- Debt adjusting
- Debt counselling
- Debt collecting
- Debt administration



By way of business (1/2)

- Proposed “indicators” based on already existing regulatory requirements but not definitive:
 - Lending is frequent
 - Lending on commercial terms with regular repayments and/or has a set or indicative final date for repayment
 - Loans are secured to ensure repayment of the loan, e.g., mortgage
 - Interest is paid on loan or a fee is charged



By way of business (2/2)

- **NOT** a black and white test, each case is different.
- Good practical barometer of whether you are lending “by way of business” will be whether you are registered with the JFSC as a lender for AML/CFT/CPT purposes **BUT** note there are differences between AML regulation and conduct regulation – divergence e.g., financial leasing agreements out of scope under AML/CFT regime but not under consumer credit regime.

So....

- Is AML/CFT/CPT regulation an appropriate barometer for lenders?
- Are there other characteristics of lending that need to be taken account of?



Proposed exemptions:

Certain types of business – over £30,000

Certain trade agreements

Advice given in newspapers

Activities carried on by trustees

Advice given in the course of a profession or business

Agreements for the supply of essential services

Activities carried on by members of the legal profession

Activities carried on by liquidators

Buy-to-let mortgages



Regulation of overseas lenders and agents

- To be consulted on by JFSC later:
 - Overseas lenders not registered in Jersey and with no operations in Jersey (Revolut/Starling/UK credit card providers)
 - Lending by overseas lenders with agents in Jersey (car finance provided by UK companies through Jersey garages, e.g., Ford/Honda etc.)
 - Agents of Jersey registered lenders (e.g., Post Office which offers loans from Reto)



What are we proposing?

Amending the Financial Services (Jersey) Law 1998 to include consumer credit business so that it is regulated by the Jersey Financial Services Commission.

The proposed regime sets out the rules we think should govern those who lend or engage in ancillary services, e.g., credit broking, debt collection, debt management etc.

- 9 core principles
- Pre-contract and contractual requirements
- Unfair Terms
- Additional exemptions



Financial Services (Jersey) Law 1998

Regulated by JFSC – new class of business

Corporate governance requirements – 9 core principles

Additional tailored principles specific for consumer credit business

Operating without a licence = punishable by imprisonment of up to 7 years and/or fine

9 Core Principles



Integrity

Due skill, care
and diligence

Good
governance

Treat
customers
fairly

Be clear, fair
and not
misleading

Suitability

Managing
conflicts

Adequate
protection of
customer assets

Open and co-
operative with
regulators



Secondary legislations and codes of practice

- YES: this is first of several consultations
- Remainder to be consulted on later by JFSC
- Future consultations will include detail around:
 - Pre-contractual requirements
 - Contractual requirements
 - Unfair terms
 - Additional exemptions

Pre-Contractual Requirements



Disclosure of information
to enable informed
choice

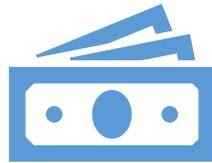


Features of agreements
or arrangements

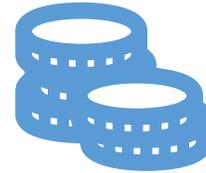
Contractual Requirements



Vulnerability checks



Affordability checks



No high set up costs, high
interest rates and unfair
fees



Cooling-off periods



Unfair Terms

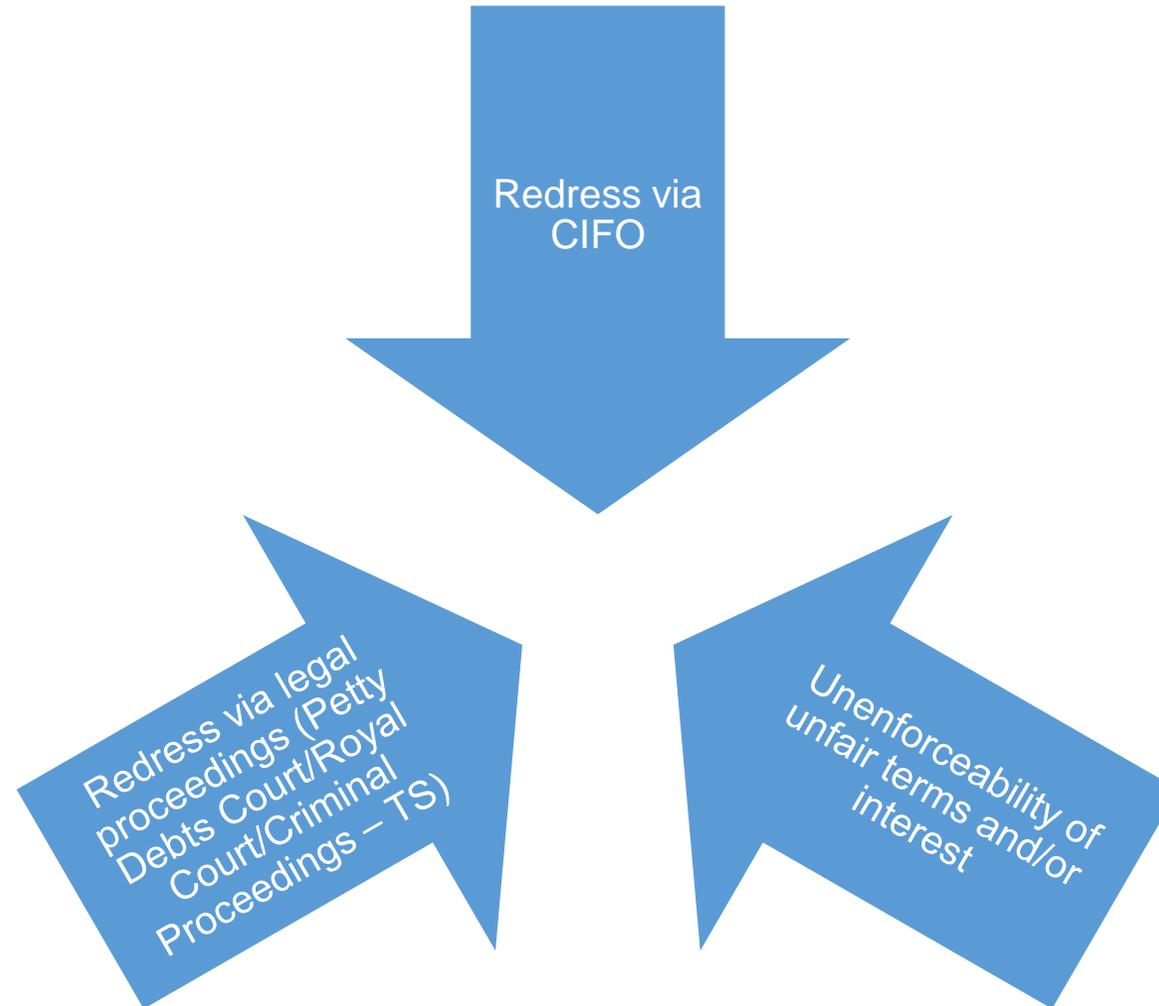
- Prescribed list – to be consulted on by JFSC (ref Guernsey 21 terms)
- Unenforceable/interest not payable
- Will require Consumer Credit Firms to consider **fairness of terms:**
 - Consumer's legitimate interests
 - Whether a contract term may be unfair in all the circumstances
 - Developments in legislation and guidance



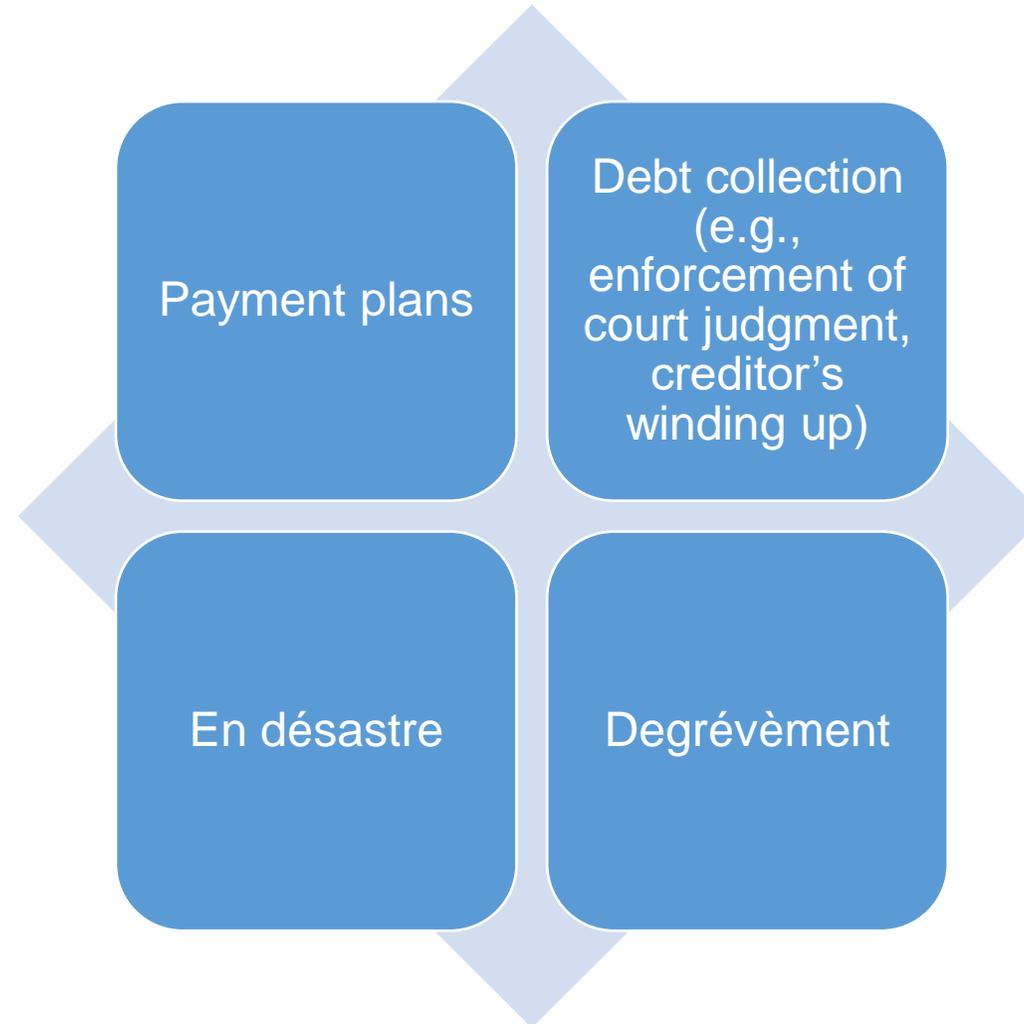
Any other exemptions?

- To be consulted on by the JFSC later, but propose:
 - Investment business
 - Non-profit organisations/charity activities for which no fee is paid
 - Transaction to which the broker is a party
 - Activities where a person has a connection to the agreement
 - Enabling parties to communicate
 - Arranging mortgages/secured lending where arranger is a party

Remedies available to consumers



Remedies available to consumer credit firms





Enforcement of debt

Where default, a requirement to resolve payment issues before legal proceedings:

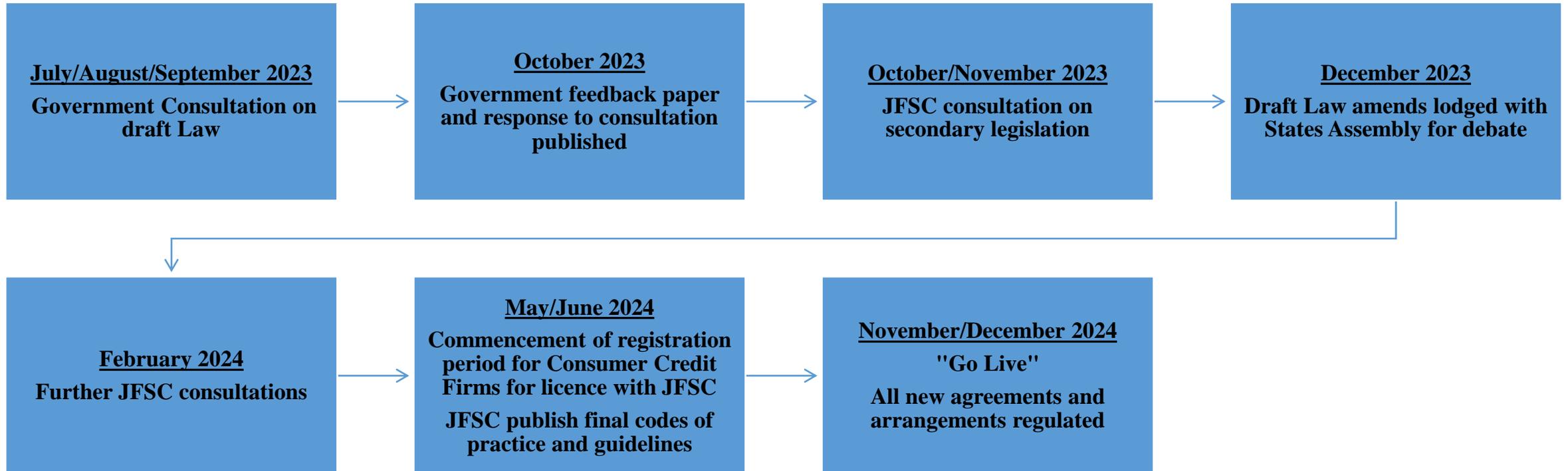
- Payment plans:
 - Expectation payment plans will be first step
 - No enforcement action where payment plan has been entered into and observed
- Debt collection:
 - Current Code of Conduct likely to be formally adopted
 - Amend Petty Debts Court Rules 2018 to require evidence of attempt to resolve payment issues before submission of claim



Current legislative action

- Bankruptcy (Désastre) (Jersey) Law 1990:
 - No effect of applications to have someone declared *en désastre*
- 1880 Loi – *Degrèvement* applications:
 - No effect of ability to make applications but proposed amends to consequences of successful application to ensure any surplus returns to debtor (no windfall for creditor)
- Companies (Jersey) Law 1990:
 - Creditors Winding Up – Statutory Demand process for creditors' winding up (small business (if fit micro-enterprise definition) debts over £3,000 but only up to £30,000)

When will this come into force?





Multiple ways to provide feedback

- www.consultations.gov.je
 - Short questionnaire for consumers
 - Short questionnaire for businesses
 - Long form more detailed questions
- By email to economy@gov.je
- By post to Julie Keir, Associate Director of Financial Services,
Department for Economy, Government of Jersey, 19-21 Broad Street, St Helier, JE2 3RR





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Thank you!

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