Economy

Consultation: Consumer Credit Regime: Summary of Proposed Regulation for Businesses

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Summary of proposals of Consumer Credit Regime for businesses

It is proposed that those that engage in lending or business ancillary to lending that involves consumers ("Consumer Credit Firms") will be required to seek authorisation from the Jersey Financial Services Commission ("JFSC").

Consumer Credit Firms will be regulated for their conduct by the JFSC. This may include:

- businesses that are already regulated by the JFSC for other regulated activities
- businesses that are not currently regulated by the JFSC, and
- private individuals if they are carrying out any of the activities which are proposed to be regulated under this regime.

The JFSC will be responsible for licensing Consumer Credit Firms and a minimum set of governance requirements will need to be met before a Consumer Credit Firm will be eligible for a licence.

Those who will benefit from the proposed consumer credit regime will be:

- individuals (i.e., natural persons), irrespective of their personal wealth or circumstances, provided they are acting wholly or mainly outside of their trade, business, or profession; and
- persons (which may include a legal person) acting by way of business where the person employs less than 10 full time employees ("FTEs"), and which have a balance sheet or turnover that does not exceed GBP 2 million ("micro enterprise")

For micro enterprises the extent of the protection provided by the new regime will be limited and will only apply where the value of the credit is at or below a prescribed limit (currently £30,000)

The proposed regime is wide ranging. It will cover any cash loan and any other form of financial accommodation. It will cover consumer credit agreements, consumer hire agreements and secured lending arrangements (commonly referred to as mortgages). Lending will be captured if it is being conducted by way of business.

In addition to lending, the types of activities that will be caught by the proposed regime are:

- advising on, administering, and arranging regulated agreements and arrangements
- credit broking in respect of regulated agreements and arrangements
- debt related activities such as debt adjusting, debt counselling, debt collecting and debt administration.

The Government proposes exempting certain types of specified business from the proposed regime in the draft Law. In addition, it is anticipated that further exemptions will be brought forward by Ministerial Order prior to implementation, for example consideration will be given to exempting from registration certain overseas lenders, such as providers of credit cards. In many cases, these exemptions will reflect the position in other jurisdictions and are intended to avoid unnecessary overlap with other regulatory regimes. Details of some of these exemptions are set out in this consultation paper. Any such proposed Orders will be consulted upon by the JFSC later.

Consumer credit business and activities will be regulated by incorporating the proposed regime into the Financial Services (Jersey) Law 1998 (“Financial Services Law”). This means that Consumer Credit Firms will be required to comply with the Financial Services Law to obtain and maintain a licence, which will in turn require, amongst other things, complying with corporate governance requirements.

Businesses that are already regulated by the JFSC are required to adhere to core principles set out in Codes of Practice. It is envisaged that similar principles will be developed for Consumer Credit Firms but tailored as necessary for the type of business being conducted, addressing areas such as:

- integrity
- due skill, care and diligence
- good governance
- treat customers fairly
- be clear, fair and not misleading
- suitability
- manage conflicts
- adequate protection of customer assets
- open and co-operative with regulators.

Adding the new provisions to the Financial Services Law means a Consumer Credit Firm that carries on unauthorised consumer credit business (i.e., without a licence), commits an offence punishable by imprisonment for a term not more than 7 years, or a fine, or both.

Regulation will also be achieved by way of the introduction of pre-contract and contractual requirements that Consumer Credit Firms will be required to comply with. These will focus on the disclosure of information to consumers, the features of the regulated agreement or arrangement, the need for vulnerability and affordability checks, restrictions around high set up costs, high interest rates and unfair fees, and the need for cooling-off periods.

It is also envisaged there will be a list of unfair contractual terms set out in secondary legislation made under the draft Law. It is proposed that if such terms are included in regulated agreements and arrangements, then they will be unenforceable and/or interest may not be chargeable on the sum borrowed.

Pursuant to customary law, it is already the case that the Royal Court may decide not to enforce a contractually agreed rate of interest to the extent that it is excessive or unreasonable. The proposed legislative amends will build on and be complementary to that discretion in relation to consumer credit. The JFSC will be consulting on the list of terms that are considered to be unfair at a later date.

There will be remedies available to consumers in the event of unfair terms and practices by Consumer Credit Firms. These will include:

- unenforceability of unfair terms and/or interest
- redress via Channel Islands Financial Ombudsman (“CIFO”)
- redress via legal proceedings.

Remedies available to Consumer Credit Firms in the event of default by consumers will include:

- Payment plans
- Debt collection
- Bankruptcy (*en désastre* or *degrévèment*)

In addition to the remedies available pursuant to the draft Law, it is important to recognise that a number of protections for consumers are already provided by the Consumer Protection (Unfair Practices) Law 2018. Trading Standards already have powers to investigate instances of alleged unfair commercial practices, and to restrict such practices with a breach of that regime being a criminal offence. It is anticipated that the new regulatory arrangements will again be complementary to and enhance these existing protections.

The Government’s intention is to lodge the draft Law with the States Assembly in December 2023. If the draft Law is approved by the Assembly in the first quarter of 2024, then it is expected to come into force by the end of 2024. A timeline indicating the intended implementation of the proposed regime is set out below.

The JFSC will consult on the secondary legislation and its proposed Codes of Practice before the draft Law comes into effect.

It is expected the new regulatory regime will apply to all new regulated agreements and arrangements. Subject to consultation, there may be further transitional provisions with respect to pre-existing agreements and arrangements.

How to give your feedback

A full explanatory document and a link to the online survey response, can be found on [gov.je/consultations.](gov.je/consultations)

There are a series of questions included in the consultation paper asking your opinion on the proposed consumer credit regime. The Government of Jersey would very much value your views and appreciate any feedback you would be happy to provide.

This timeline indicates the stages which will lead to the introduction of the Proposed Regime in a timely fashion whilst providing sufficient time for the JFSC and Consumer Credit Firms to make any necessary operational changes to enable compliance.