



Consultation: Consumer Credit Regime: Proposed Regulation

JULY 2023

Consumer credit regime: proposed regulation

SUMMARY OF PROPOSALS

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.

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 of Jersey 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 proposed Ministerial 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
- managing 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 of 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 must 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 amendments 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.

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 (“**Consumer Protection Law**”). 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 be complementary to and enhance these existing protections.

The Government's intention is to lodge the draft Law with the States Assembly by 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 at Appendix 4.

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.

There are a series of questions included in the consultation paper asking your opinion on the proposed consumer credit regime. A list of the questions posed can also be found at Appendix 2 at the end of this paper for ease of reference. The Government values your views and appreciates any feedback you would be happy to provide.

Contents

INTRODUCTION	5
BACKGROUND	6
PROPOSALS	8
Overview of the legislation.....	8
Licensing Consumer Credit Firms	9
Principles for the conduct of financial service business.....	10
Who will benefit from the regime?	12
What is consumer credit business?.....	14
Activities that are ancillary to consumer lending	16
Private Lenders	18
What is excluded from the scope of consumer credit business in the draft Law?.....	20
Further exemptions that may be provided by Order.....	22
Regulating overseas lenders, their agents and the agents of Jersey lenders.....	23
Overseas lenders not registered in Jersey and with no operations in Jersey	23
Lending by overseas lenders with agents in Jersey	23
Regulating agents of Jersey registered lenders.....	24
How will the activities caught by the consumer credit regime be regulated?	25
Unfair Terms	29
Remedies available to Consumer Credit Firms in event of default or non-compliance by consumer	31
Proposed amendments to the dégrèvement regime.....	32
Remedies available to Consumers in the event of unfair terms and practices by Consumer Credit Firms.....	34
Unenforceability of unfair terms and/or interest	34
Redress via CIFO.....	34
Redress via legal proceedings.....	34
Timeline to introduction of proposed regime	36
Appendix 1	37
Appendix 2	38
Appendix 3.....	40
Appendix 4	48

INTRODUCTION

- 1) The Government, working together with the JFSC and representatives from multiple arm's length organisations and those in the consumer credit industry, has developed proposals to regulate the provision of consumer credit in Jersey.
- 2) The purpose of this consultation paper is to provide further details of the proposed regulatory scheme for consumer lending. The Government is keen to ensure that these proposals will protect consumers from abusive business practices and enable them to make well-informed decisions regarding the use of credit products and services. The Government also wishes to provide clarity for the businesses that it is proposing will be regulated, that the regime will be practicable to implement and compatible with existing regulatory requirements in neighbouring British jurisdictions.
- 3) The Government would like to receive feedback from consumers and from providers of credit services on the scheme proposed. This consultation is focussed on the content of the draft Financial Services (Amendment No.5) (Jersey) Law 202- ("**draft Law**") that will set the scope of the new regulatory framework and provide some additional powers to impose substantive requirements on the providers of consumer credit and business ancillary to consumer credit. A copy of the draft Law can be found at Appendix 1.
- 4) This consultation document provides an outline of existing regulations that will apply to the proposed regime by virtue of the Financial Services (Jersey) Law 1998 ("**Financial Services Law**") and The Financial Services Commission (Jersey) Law 1998 ("**Commission Law**") as well as the new regulatory framework. It also explores the secondary legislation that may be made under existing powers in the Financial Services Law and using new powers that will be introduced by the draft Law. Comments are sought on those outline proposals, but it is anticipated that there will be further consultation(s) led by the JFSC regarding the detail that will be included in secondary legislation and on Codes of Practice and other regulatory matters, including fees.
- 5) A table of the questions posed in this consultation paper is attached at Appendix 2.

BACKGROUND

- 6) The Government recognises the importance of upholding standards of consumer protection and of protecting the reputation of Jersey's finance industry as being well-regulated and reputable. In the context of consumer lending the Government proposes that a balance must be struck between protecting consumers through robust controls while simultaneously ensuring that these are proportionate and do not lead to a reduction in access to credit because an excessive regulatory burden is placed on lenders.
- 7) A well-functioning consumer lending market enables consumers to access goods and services and is vital to the economy. Except in relation to anti-money laundering and the countering of the financing and proliferation of terrorism, lending to consumers is not currently directly regulated in Jersey.
- 8) It is important to recognise that some protection is provided to consumers by the Consumer Protection Law which bans traders in all sectors from using unfair commercial practices towards consumers, stops businesses from using aggressive selling techniques, and from misinforming or misleading people about products or services. The Consumer Protection Law, the enforcement of which is led by Trading Standards, has established criminal offences that can already be used to prosecute businesses to address some of the worst practices that might arise in the consumer lending space.
- 9) It is also the case that a proportion of lending in Jersey is provided by regulated deposit-takers (banks) whose deposit-taking is already supervised by the JFSC. Whilst this means that those banks are already subject to several governance controls and other requirements that would be imposed on lenders pursuant to the draft Law, Jersey does not currently place regulatory requirements on their lending business.
- 10) There is a voluntary Code of Practice for Consumer Lending ([Consumer lending code of practice \(gov.je\)](#)) which many companies involved in consumer lending activity voluntarily adhere to, but it is not compulsory and compliance with this Code of Practice is not currently overseen by a regulator. As such, there is a potential risk of consumers being unfairly treated and only limited avenues through which they may seek effective redress for any material financial hardship they might suffer. There is also no level playing field within which businesses should be operating which may, in turn, be reducing opportunity for those businesses thus curtailing the market offering for consumers.
- 11) Complaints regarding consumer lending are eligible for referral to CIFO, as established by the Financial Services Ombudsman (Jersey) Law 2014 ("**Ombudsman Law**"). Specifically, relevant credit business falls inside scope of the Ombudsman Law and is defined in Schedule 4 to include:
 - a) provision of credit under credit agreements
 - b) credit reference agency business
 - c) debt-adjusting
 - d) debt-counselling
 - e) debt-collecting

f) debt administration

- 12) The Government consulted on its intention to regulate the consumer lending market within Jersey in late 2018/early 2019 (“**2018/2019 Consultation**”) ([Consultation on proposed regulation of consumer lending \(gov.je\)](#)). The results of that consultation paper have formed the basis of this consultation paper. A summary of the 2018/2019 Consultation feedback received can be found at Appendix 3.
- 13) Those who responded to the 2018/2019 Consultation, which included several industry participants, indicated that consumer credit regulation was desirable. It was equally clear from feedback received that it was important for there to be alignment with the UK’s regime as many of the consumer lending products and services offered to consumers are provided by UK businesses and/or are based upon those offered within and built around the UK’s regime. Feedback was clear: aligning Jersey’s regime with the UK’s will help to ensure interoperability within businesses and continued service provision, whilst retaining products and services that are familiar to consumers.
- 14) That said, it was equally noted by respondents to the 2018/2019 Consultation that the UK’s consumer credit regime is, in parts, overly burdensome and difficult to navigate. Respondents felt that a Jersey regime ought to be simpler and more proportionate than the UK’s, to reflect Jersey market size and demographic.
- 15) Furthermore, Guernsey has recently introduced its own consumer credit regulations by way of The Lending, Credit and Finance (Bailiwick of Guernsey) Law, 2022 (“**Guernsey’s Consumer Credit Law**”). Guernsey’s Consumer Credit Law is based on the principles and approaches of the UK’s regime but simplifies some aspects of its controls. As many of the consumer credit firms operating in the Channel Islands operate in both Jersey and Guernsey, to avoid unnecessary friction for consumers and providers of consumer credit alike it is important that our own regime is compatible with Guernsey’s Consumer Credit Law. As such, to the extent Jersey’s unique legislative framework allows, in preparing the proposals for a consumer credit regime for Jersey, we have sought compatibility with both the UK’s regime and Guernsey’s Consumer Credit Law.
- 16) Considering the feedback received from the 2018/2019 Consultation and working closely with industry and the consumer-focused arm’s length organisations, the proposals set out in this consultation paper seek to strike an appropriate balance of regulation for both consumers and those to be regulated.
- 17) An overview of the Government’s proposed regulatory regime for consumer credit is set out below.

PROPOSALS

Overview of the legislation

- 18) Consumer Credit Firms, (i.e., those that engage in lending by way of business, and business ancillary to lending, involving consumers), will be required to seek authorisation to do so from the JFSC. Consumer Credit Firms will be regulated for their conduct by the JFSC.
- 19) The foundation for the consumer credit regime will be the Financial Services Law, which already provides a framework of powers for the registration of financial service businesses, for the imposition of controls on their governance and the conduct of their business. Rather than re-creating such requirements for Consumer Credit Firms, the draft Law creates a new class of regulated business, “consumer credit business”, under Article 2 of the Financial Services Law. The draft Law also inserts a new Schedule 1A into the Financial Services Law, which defines what consumer credit business is, who benefits from the regime, and what type of agreements and activities are covered. The draft Law also adds some exemptions from the scope of Schedule 1A to Schedule 2 to the Financial Services Law; and provides for a set of consequential amendments to be made to existing legislation. These will all be explored in more detail below.
- 20) The Financial Services Law currently legislates for the provision of investment business, trust company business, money service business, fund services business and general insurance mediation business. Although it is recognised that the nature of consumer credit and the strong consumer protection focus of a consumer credit regime differs somewhat to traditional financial services regulated by the JFSC, it is anticipated that the JFSC will be able to put in place Codes of Practice and Guidance Notes regarding the conduct of consumer lending business. The use of these powers will ensure that regulation can remain agile and respond to market developments.
- 21) In addition to the JFSC using its existing powers, new regulation making powers will be added to the Financial Services Law by the draft Law for the purposes of regulating consumer lending. The new Article 31A, inserted by Article 4 of the draft Law, allows the States Assembly to impose additional restrictions, including specific provision in relation to unfair contract terms in consumer lending agreements. The enforcement of those restrictions and the rights of consumers where those restrictions are breached can also be addressed in those regulations and provide an appropriate basis for CIFO to handle complaints regarding consumer lending.
- 22) For the avoidance of doubt, the secondary legislation and/or JFSC’s Codes of Practice and Guidance Notes are not the subject of this consultation document. Where any indication of the content of secondary legislation is given, this is only an initial high-level outline of the potential options. The JFSC will undertake further consultation(s) before regulatory requirements come into effect.

Q1. Please provide any comments you have on the proposal to establish “consumer credit business” as a class of regulated business under the Financial Services Law?

Licensing Consumer Credit Firms

- 23) The JFSC will be responsible for licensing Consumer Credit Firms, as it does with other regulated entities under the Financial Services Law. This is the most efficient approach to registration and will provide a mechanism to obtain comprehensive information from these businesses about their lending activities. The licensing arrangements themselves are not the subject of this consultation as the JFSC, who will be responsible for licensing arrangements, will, in due course, consult separately on how it intends to issue licences.
- 24) The minimum governance requirements that we propose for Consumer Credit Firms to be eligible for a licence include the:
- a) provision of information to the JFSC of the beneficial owners, board members, senior management, and people in control functions demonstrating integrity and competence; and
 - b) confirmation and evidence that the Consumer Credit Firm has appropriate governance and internal controls in place, including specific controls to mitigate consumer protection risks.
- 25) By adding consumer credit business to the Financial Services Law, the draft Law will provide the JFSC with the powers it needs to regulate Consumer Credit Firms.

Q2. Do you agree that Consumer Credit Firms should be licensed by the JFSC? If not, please explain.

Principles for the conduct of financial service business

26) The businesses that are already regulated under the Financial Services Law are regulated by reference to a set of core principles, set out in the relevant Codes of Practice. These core principles will inform the requirements imposed on Consumer Credit Firms and are like those in the existing voluntary Code of Practice for Consumer Lending. Similar principles were embedded in the Government's guidance for consumers and their providers of credit and related services during the Covid-19 crisis, published in August 2020 ([Final guidance on consumer lending \(gov.ie\)](https://www.gov.ie/publications-and-resources/download/?uuid=312020-00000-00000-00000-00000)).

27) Similar principles also inform the regulation of financial service businesses in the UK, Guernsey and other jurisdictions, and these principles inform the UK and Guernsey consumer lending regimes. These principles are:

- a) **Integrity:** observe high standards of integrity and fair dealing in the conduct of business
- b) **Due skill, care and diligence:** conduct business with due skill, care and diligence
- c) **Good governance:** take reasonable care to organise and control business affairs responsibly and effectively, with adequate risk management systems in place
- d) **Treat customers fairly:** pay due regard to the best interests of customers and treat them fairly with appropriate complaints handling and dispute resolution mechanisms in place
- e) **Be clear, fair and not misleading:** be transparent in business arrangements and statements including paying due regard to the information needs of customers and communicate information to them in a way which is clear, fair and not misleading or deceptive
- f) **Suitability:** take reasonable care to ensure the suitability of advice and discretionary decisions for any customer who is entitled to rely upon its judgment
- g) **Manage conflicts:** manage conflicts of interest fairly, both between itself and its customers and between a customer and another client
- h) **Adequate protection:** provide adequate protection for customer's assets when responsible for them and
- i) **Open and co-operative:** deal with regulators in an open and co-operative manner and disclose to the relevant regulator anything relating to the Consumer Credit Firm which that regulator would reasonably expect notice of

28) The proposals bring within scope of the regulations the following activities:

- a) The entering into and exercising of rights under regulated credit and hire agreements and secured lending arrangements
- b) Advising on, administering and arranging regulated consumer credit and hire agreements and secured lending arrangements
- c) Credit broking in respect of regulated consumer credit and hire agreements and secured lending arrangements and
- d) Debt related activities such as debt adjusting, debt counselling, debt collecting and debt administration

Q3. Please provide any comments you have on the core principles that will shape the regulation of Consumer Credit Firms.

Q4. Do you agree with the scope of activities that the Government proposes are regulated? If not, please explain.

Who will benefit from the regime

- 29) The new regulatory regime will provide protections where a person provides credit to a “consumer” by way of business. The consumers who will benefit from the protections offered will be defined in Part 1 of Schedule 1A to the Financial Services Law, which will be inserted by the draft Law. The definition proposed in the draft Law has, for consistency purposes, been adopted from the Ombudsman Law’s definition of an eligible “complainant”. As is reflected later in this document, there are benefits from consistency when it comes to the approach that might be taken to enforcing the new regime.
- 30) Currently, it is proposed that the consumer credit regulation will benefit:
- a) individuals (i.e., natural persons), irrespective of their personal wealth or circumstances, if they are acting wholly or mainly outside of their trade, business, or profession and
 - b) persons (which may include a legal person) acting by way of business where the person employs less than 10 full time equivalents (“**FTEs**”) and whose annual turnover or balance sheet total does not exceed GBP 2 million (a “**micro enterprise**”)
- 31) However, Government has concerns that the definition of eligible “complainant” used in the Ombudsman Law may no longer be appropriate. The Ombudsman Law was passed in 2014, prior to the UK’s departure from the European Union, and the definition of eligible “complainant” or “micro-enterprise” has not been updated since. The definition of “micro-enterprise” for the purposes of the definition of eligible “complainant” in the Ombudsman Law relies directly on European Union Law. Article 8(3)(b) of the Ombudsman Law describes among its eligible complainants “*a microenterprise, within the meaning of the [EU] Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (OJ L 124/36, 20.05.2003), as amended from time to time*”. Article 2 of that Recommendation, in turn defines a “micro-enterprise” as “*an enterprise which employs fewer than 10 persons and whose annual turnover and/or annual balance sheet total does not exceed EUR 2 million*”. Article 1 of that Recommendation further defines enterprise as “*any entity engaged in an economic activity, irrespective of its legal form. This includes, in particular, self-employed persons and family business engaged in craft or other activities, and partnerships and associations regularly engaged in economic activity.*”
- 32) One challenge with the definition used in the Ombudsman Law, that has been addressed in the draft Law, is that it is unsatisfactory to define a micro-enterprise by reference to its turnover or balance sheet as denominated in Euros. This could mean that status as a micro-enterprise, and thus eligible complainant, would vary based on exchange rate fluctuations, where a business is on the cusp of being defined as an “eligible complainant”.
- 33) Considering the concerns raised regarding the definition of “micro-enterprise”, Government suggests the current draft of the definition of “consumer” in the proposed amends to the Financial Services Law, be further amended so that it is de-coupled from

the EU definition and removes the reference to the monetary value of €2 million (Euros), replacing it with £2 million (Pounds Sterling).

- 34) We further propose that the definition of “micro-enterprise” for the purposes of the definition of eligible “complainant” in the Ombudsman Law is also amended to reflect the definition of consumer used for the consumer credit regime.

- Q5. Please provide any comments you have on the proposed definition of “consumer”.**
- Q6. Please provide any comments you have on the proposed definition of “micro-enterprise”.**
- Q7. Do you agree that the monetary denomination in the definition of “micro-enterprise” should be expressed in Pounds Sterling as opposed to Euros? If not, please explain.**
- Q8. Do you think that the reference to monetary value of the balance sheet or annual turnover should be removed entirely from the definition of “micro-enterprise” so that it is determined by the number of FTEs only? Please explain.**
- Q9. Please provide any comments you have on the possibility of amending the definition of “micro-enterprise” in the Ombudsman Law so that it reflects the proposed definition of “micro-enterprise” in the Financial Services Law.**

What is consumer credit business?

- 35) As noted above, the full definition of consumer credit business will be set out in Part 1 of Schedule 1A of the Financial Services Law.
- 36) Credit will be defined to include a cash loan and any other form of financial accommodation. This reflects the definition of “credit” that already exists in Paragraph 2 of Schedule 4 of the Ombudsman Law.
- 37) Schedule 1A to the Financial Services Law as inserted by the draft Law would provide that a consumer credit agreement is “*any agreement between a consumer and another person (“B”) under which B provides the consumer with any amount of credit*”. There are, however, exemptions to this definition, which we have set out in detail below.
- 38) New Schedule 1A provides that a hire purchase agreement has the same meaning as that given in Article 1 of the Supply of Goods and Services (Jersey) Law 2009:
- ““hire purchase agreement” means a contract, other than a conditional sale agreement under which –*
- (a) goods are let in return for periodical payments by the person to whom they are let; and*
 - (b) the property in the goods will pass to that person if the terms of the agreement are complied with and one or more of the following occurs –*
 - (i) the exercise of an option to purchase by that person,*
 - (ii) the doing of any other act by any party to the agreement, being an act specified in the agreement,*
 - (iii) the happening of any other event, being an event specified in the agreement.”*
- 39) Schedule 1A defines a secured lending arrangement as “*an arrangement which creates or may create a security for the repayment of a loan or for the discharge of another obligation against immovable property in Jersey used for residential purposes (including, for example, a hypothec, under the Loi (1880) sur la propriété foncière and a security interest under the Security Interests (Jersey) Law 2012)*”.
- 40) Subject to the application of the exemptions and transitional provisions described later in this document or that might be added later, if the draft Law is adopted by the Assembly, then it is intended that all new consumer credit and hire agreements, and secured lending arrangements will become regulated agreements or arrangements on the date on which the proposed amendments to the Financial Services Law are brought into force following Royal Assent.
- 41) It is anticipated that after Royal Assent, providers of these agreements and arrangements will have a further 6 months before all aspects of the new regime are brought into force, with businesses being able to register from mid-2024. This is to enable consumers, Consumer Credit Firms and the JFSC to adjust to the new regulations. Subject to this and other consultations to follow, it is anticipated that full regulation will be effective by end Q4

2024. A projected timetable for all stages of the legislative process to implement the regulation of consumer credit business is set out at Appendix 4.

- 42) Under Part 2 of Schedule 1A, anyone who enters into a regulated credit agreement or secured lending arrangement, or a regulated consumer hire agreement by way of business will (subject to exceptions detailed below) be required to register with the JFSC.
- 43) As drafted the Financial Services Law will apply to a person who enters into, or exercises rights and duties of the lender (or has the right to exercise the lender's rights and duties), a regulated consumer credit agreement or regulated secured lending arrangement as a lender and carries on credit business. It will also apply to a person who enters into a regulated consumer hire agreement as an owner or exercises rights and duties (or has the right to exercise rights and duties of the owner) and carries on credit business.
- 44) It is intended that "person" shall be interpreted widely and include an individual or legal person carrying out one of the activities caught by the consumer credit regime by way of business. A legal person is interpreted as meaning any of those entities that have been defined by Government¹, but not limited to, the following: a company, incorporated cell company, protected cell company, limited liability company, limited liability partnership, incorporated limited partnership, separate limited partnership, a foundation, or an incorporated association.
- 45) "By way of business" may be interpreted to mean that lenders are subject to the draft Law if lending is conducted commercially. Any of the following factors may indicate this could be the case:
- a) Lending is frequent
 - b) Lending is on commercial terms with regular repayments and / or has a set or indicative final date for repayment
 - c) Loans are secured to ensure repayment of the loan, such as a mortgage and/or
 - d) Interest is paid on the loan or a fee is charged
- 46) By way of example, it is envisaged that the above definitions would capture the following types of agreements entered into by a firm operating in or from within Jersey by way of business, subject to any specific exemptions, albeit this is a non-exhaustive list and is provided for context:
- a) Personal loans (including from banks)
 - b) Credit extended by debt collection agencies
 - c) Mortgages over Jersey residential properties which is the consumer's primary residence
 - d) Credit provided as part of debt-adjusting and debt administration services
 - e) Business loans to micro-enterprises, up to a limit (£30,000)
 - f) Personal contract purchase ("PCPs") financing/balloon loan (typically used for car finance)
 - g) Peer to peer lending

¹ [Legal persons and arrangements \(LPAs\) \(gov.je\)](https://www.gov.je/legislation/legislation-arrangements)

- h) Store credit
- i) Credit cards
- j) Linked credit
- k) Hire purchase
- l) Pay day loans
- m) Overdrafts (where interest and/or fees are charged)
- n) Buy now pay later (“BNPL”) loans

47) For clarity, it is not intended that agreements with deferred payment mechanisms, such as club memberships or insurance payments, will be classified as consumer credit business.

48) Although feedback from the 2018/2019 Consultation suggested that BNPL loans should not be captured by the proposed regime, and we note that BNPL loans are not currently regulated in the UK or Guernsey, we have included BNPL loans within scope of the legislation. This may, at first glance, seem out of step with our intention to closely align with the regimes in these jurisdictions. However, following a recent legislative review and consultation by HMT, the UK is currently amending its own legislation to incorporate such loans in its consumer credit regime. Furthermore, early discussions with Jersey’s consumer credit industry and arm’s length consumer focussed organisations have indicated that BNPL loans may be subject to bad practice and such conduct is having a negative impact on Jersey consumers. Consequently, a recommendation was made that BNPL loans ought to be in scope of the proposed regime which the Government has listened to. Under the proposed regime, a distinction will be made between low value short term BNPL agreements offered by third party lenders and short-term interest free credit providers typically for higher value goods and repayable over 12 months. This is because it is considered that short term interest free credit agreements do not represent the same risk to consumers and will be exempt (see below).

49) As indicated above, it is envisaged that store credit will be included where it falls within the definition of consumer credit business and is not subject to exemptions, such as in relation to short-term interest free credit providers. However, it is not intended to cover store credit for returned goods.

- Q10. Do you agree with the definition of “consumer credit business”? If not, please explain.**
- Q11. Please provide any comments you have on the definitions proposed for “consumer credit agreement” or “consumer hire agreement”.**
- Q12. Please provide any comments you have on the proposed definition of “secured lending arrangement”.**
- Q13. Do you agree with the proposals to regulate the entering into and exercising rights under regulated agreements and secured lending arrangements? If not, please explain.**
- Q14. Do you agree that “person” should be interpreted widely and include an individual or legal person carrying out one of the activities caught by the consumer credit regime by way of business? If not, please explain why.**
- Q15. Please provide any comments you have on the inclusion of BNPL agreements in the proposed regime.**

50) In addition to lending, the following types of activity will be regulated as forms of consumer credit business:

- a) **Advising:** Part 3 of the proposed Schedule 1A sets out what constitutes advising in the context of regulated agreements and arrangements. Advising is to include where a person advises another person, e.g., a consumer, to enter into a particular regulated consumer credit agreement or regulated secured lending arrangement or to vary the terms of such an agreement or arrangement causing the consumer's obligations under the agreement or arrangement to vary. It is also proposed to extend the legislation to advice given in the context of consumer hire agreements and the varying of those agreements
- b) **Administering:** Part 3 of the proposed Schedule 1A captures within the consumer credit regime the "administering" of regulated agreements and arrangements. This means that a person who notifies a borrower (or hirer) of changes in interest rates or payments due under the agreement or arrangement, or of other matters of which the agreement or arrangement requires the borrower (or hirer) to be notified, and who takes any necessary steps to collect or recover payments due under an agreement or arrangement from the borrower (or hirer) is considered to be "administering" and will be subject to regulation. However, it is not intended that a person will be treated as administering a regulated agreement or arrangement merely because they have the right, or exercises a right, to take action for the purposes of enforcing the regulated agreement or arrangement
- c) **Arranging:** is an activity also set out in Part 3 of the proposed Schedule 1A. A person who administers a regulated agreement or arrangement is deemed to carry on consumer credit business. A person is considered to arrange a regulated agreement or arrangement when they arrange for another person to enter into a regulated agreement or arrangement or vary for another person a regulated agreement or arrangement that has already been entered into, so that the person's obligations under an existing regulated agreement or arrangement are changed. In either case, it will not matter whether the arranging is done on behalf of the lender or hirer or otherwise
- d) **Credit Broking:** credit broking is captured at Part 4 of the proposed Schedule 1A. A person will be credit broking if they:
 - (1) make an introduction to an individual who wants to enter into a regulated agreement or arrangement with another person, with a view to that other person acting as a lender or owner (as the case may be) by way of business
 - (2) presents or offers an agreement or arrangement which, if entered into, would be a regulated agreement or arrangement
 - (3) assists an individual by undertaking preparatory work with a view to that individual entering into a regulated agreement or arrangement
 - (4) enters into a regulated agreement or arrangement on behalf of a lender

For the purposes of regulating credit broking, it will not matter whether the regulated agreement or arrangement is subject to the law of a jurisdiction outside of Jersey

For the avoidance of doubt, a person will not be credit broking if the person only provides details of potential lenders or owners (as the case may be), to an individual

- e) **Debt Adjusting:** will be a regulated activity under Part 5 of Schedule 1A. A person will be debt adjusting where they are, in relation to debts due under a regulated agreement or arrangement:
- (1) negotiating terms of discharge of a debt with the lender or owner on behalf of a borrower or hirer
 - (2) taking over, in return for payments by the borrower or hirer the borrower or hirer's obligations to discharge a debt, or
 - (3) carrying on any similar activity concerned with the liquidation of a debt
- f) **Debt Counselling:** will be a regulated activity under Part 5 of Schedule 1A. Subject to certain exemptions set out below, a person who gives advice to a borrower or hirer about the liquidation of a debt due under a regulated agreement or arrangement will be providing debt-counselling services and will require a licence from the JFSC to do so.
- g) **Debt Collecting:** will also be a regulated activity under Part 5 of Schedule 1A. As such, any person who takes steps to procure the payment of a debt due under a regulated agreement or arrangement will be debt collecting. This is irrespective of whether the debt-collecting activity is undertaken by a third party on behalf of a lender or owner
- h) **Debt Administration:** the final activity regulated under Part 5 of Schedule 1A. A person will be deemed to carry out debt administration if a person takes steps to perform the duties or enforce rights (so far as those steps are not debt collecting) of either a lender or owner (as the case may be)

- Q16. Do you agree with the proposals that bring "advising" within the scope of the proposed regime? If not, why not?
- Q17. Please provide any comments you have on the proposals relating to "administering" and bringing the activity within scope of the proposed regime.
- Q18. Please provide any comments you have relating to the proposals to bring "arranging" into scope of the Financial Services Law.
- Q19. Please provide any comments you have on the proposals relating to "credit broking".
- Q20. Please provide any comments you have on the proposals bringing "debt adjusting", "debt counselling", "debt collecting" or "debt administration" into scope of the proposed regime.

Private Lenders

- 51) As set out above, all lending activity, unless explicitly exempted from legislation as detailed below, is in scope of the regime if it is being undertaken “by way of business”. An indicative list of factors that may be relevant to assessing what is “by way of business” is set out in paragraph 45).
- 52) A good practical barometer for determining whether a lender is caught within scope of the draft Law is whether a lender is required to be regulated by the JFSC for Anti-Money Laundering, Countering the Financing of Terrorism and Countering Proliferation Financing (“**AML/CFT/CPF**”). Consequently, in practically terms, if a lender is required to be regulated for AML/CFT/CPF, then the lender can assume the draft Law will apply. This is irrespective of whether the lender is a private individual or a company.
- 53) It is noted that Guernsey has exempted some private lenders from being licensed, but only where the number of loans provided is very small and the overall value of the loans provided is less than £2 million. Even in those cases, it will be necessary for private lenders to appoint a service provider to discharge their AML/CFT obligations. It is not proposed to provide a similar exemption at this stage, but the Government recognises that there may be challenges for some lenders (particularly individual private lenders) in preparing for regulation who may need additional time to comply with their obligations under the draft Law.
- 54) One issue faced is that there are many definitions of private lending and input is sought on what characteristics would best define this cohort of lenders.
- 55) The current transitional period proposed is 6 months (Article 5, Schedule 1A, Paragraph 7 (Schedule 5, Paragraph 4)). However, it may be necessary to have some specific transitional provision(s) put in place to facilitate implementation for these lenders.

- Q21. Do you consider yourself to be a private lender? If so, please outline what characteristics should be used to distinguish private lenders for these purposes.**
- Q22. Do you have any specific concerns as to the regulation of private lenders and any variations that you think should apply to address your concerns? If so, please explain.**
- Q23. Are there any categories of private lender that you think ought to be exempt from the draft Law? If so, please explain what categories should be exempt and why.**
- Q24. The draft Law currently provides for a 6-month transitional period for those who are to become regulated to comply with the regime once legislation is enacted. Do you think an additional transitional period is required to enable individual private lenders to comply with their obligations under the draft Law? Please explain your answer.**

What is excluded from the scope of consumer credit business in the draft Law?

56) We propose to exempt certain types of specified business from the definition of consumer credit business. There are a range of reasons for these exemptions, which are explained below. In many cases these exemptions reflect the position in other jurisdictions and are also intended to avoid unnecessary overlap with other regulatory regimes.

57) The types of business that the Government proposes to exclude can be found in Article 6 of the draft Law, which amends Part 2 of Schedule 2 of the Financial Services Law. The new exclusions are as follows:

- a) **Certain business loans:** where a loan is provided, or goods hired, to an individual or micro-enterprise for business purposes over the value of the amount that can be claimed in the Petty Debts Court, currently £30,000, it will be exempted from regulation. This is because, a loan or hire agreement over £30,000 for business purposes is thought to be outside of “consumer credit” being of a value where a micro-enterprise could protect itself by obtaining legal or other professional advice.
- b) **Certain trade agreements:** where consumer credit business is carried on in connection with trade in goods or services between Jersey and a jurisdiction outside of Jersey, within a jurisdiction outside of Jersey or between jurisdictions outside of Jersey, and the credit is provided to the borrower in the course of the borrower’s business, it will be exempt. This is particularly relevant to sole traders and micro-enterprises who may conduct shipping trade across multiple jurisdictions.
- c) **Advice given in newspapers etc.:** advising is an activity that is regulated by the consumer credit regime. However, generic advice given, for example, in newspapers, magazines, television broadcasts or other electronic information services will not be consumer credit business provided that the principal purpose of the advice is not the giving of that advice and no direct benefit from any business is derived from such advice.
- d) **Activities carried on by trustees:** a trustee who, in their capacity as a trustee, advises a co-trustee or beneficiary on consumer credit business will be exempt. However, this exemption will not apply if the advice given is charged or paid for separately from the other services received.
- e) **Advice given in the course of a profession or business:** advice given by someone carrying on a profession or business which does not otherwise consist of financial service business, and which is considered reasonably necessary for the services provided by that profession or business will be exempt. However, this exemption will not apply if the advice given is charged or paid for separately from the other services received.
- f) **Agreements for supply of essential services:** if the agreement which would otherwise be a consumer credit agreement, is for the provision of essential services

such as gas, electricity or water and the agreement relates to a meter or metering equipment used to supply the relevant essential service, it will be exempt.

- g) **Activities carried on by members of the legal profession etc.:** those activities carried out by members of the legal profession will be exempt from regulation if the professional is acting in their capacity as a professional and the activity being carried out is regulated by the Law Society of Jersey.
- h) **Activities carried on by liquidators:** a person who acts as a liquidator or in reasonable contemplation of becoming a liquidator is exempt from regulation if they carry out activities that would otherwise be deemed consumer credit business.
- i) **Buy-to-let secured lending arrangements:** a buy to let secured lending arrangement which provides that the immovable property subject to the secured lending arrangement cannot at any time be occupied as a dwelling by the borrower or by a related person and is to be occupied as a dwelling on the basis of a rental agreement is exempt from the proposed regime. A related person, for the purposes of the proposed regime, means a spouse or civil partner of the person (or borrower) who has entered into the buy-to-let secured lending arrangement, a person whose relationship with the borrower has the characteristics of a spouse, or the borrower's parent, brother, sister, child, grandparent or grandchild.

58) The draft Law also proposes to amend Schedule 5 to the Financial Services Law to insert additional transitional provisions. The purpose of these provisions is to make it clear that the new requirements will only apply to credit business that is conducted after the legislation comes into force. It will not be retrospective. However, any agreement or arrangement that has terms renegotiated after the legislation comes into force so as to cause a new agreement or arrangement to be entered into, will be caught. An example of the latter will be where a secured lending arrangement (or mortgage) has been entered into for a term of 25 years but is a fixed interest rate term for, say 2 or 5 years. When the 2 or 5 year period expires then a new secured lending arrangement with new interest rate charges will be entered into under the umbrella of the 25 year term. The new secured lending arrangement with new interest rates will be subject to the new legislation if entered in to after the proposed regime comes into effect.

Q25. Do you agree with the proposed exemptions to the proposed regime? If not, please explain.

Q26. Are there any other exemptions that you think should be included in the Financial Services Law that we have not included? If so, please provide details.

Q27. Do you agree that regulation of consumer credit business should only apply to consumer credit business entered into after the legislation comes into effect? If not, why not?

Further exemptions that may be provided by Order

- 59) On the recommendation of the JFSC, the Minister already has powers under Article 4 of the Financial Services Law to amend the exemptions provided in Schedule 2 to that Law and to create exemptions from the requirements to register with the Commission pursuant to Article 7 of that Law.
- 60) An exemption from the requirements under Article 7 of the Financial Services Law created by Order may be conditional on certain requirements being met. Where a business is not required to register with the JFSC it may still be required to notify the JFSC that it is carrying out certain activities. As it is only an exemption from registration, the JFSC would therefore have certain powers, such as enforcement powers but not full powers to regulate.
- 61) The JFSC will consult on the proposed exemptions that it may recommend to the Minister in due course. However, at this stage it is anticipated that some of those activities that may be excluded from regulation or from the need for registration by Order will be:
- a) Those dealing with agreements including a total charge for credit – it is understood that these relate to credit unions and those lending in very specific circumstances and potentially, applicable to entities such as Community Savings
 - b) Persons registered to carry on investment business
 - c) Non-profit organisation/charity activities for which no fee is paid
 - d) Transaction to which the broker is a party
 - e) Activities where a person has a connection to the agreement
 - f) Agreements not causing a deal
 - g) Enabling parties to communicate
 - h) Arranging secured lending arrangements to which the arranger is a party.

Q28. Bearing in mind the JFSC will consult later, please provide any comments you have on the proposed further exemptions.

Regulating overseas lenders, their agents and the agents of Jersey lenders

Overseas lenders not registered in Jersey and with no operations in Jersey

62) Overseas Consumer Credit Firms that do not operate in Jersey in any way, such as UK or Guernsey lenders that do not have a presence or agent in Jersey, will not be required to be registered in Jersey. This means that any recourse a Jersey resident consumer may have against an entity registered overseas will lie with rights the consumer may have under foreign law and regulation. This is different to the Guernsey position, which is understood to require UK lenders to notify the GFSC that they conduct business in Guernsey, as the UK is deemed an equivalent jurisdiction under Guernsey's Consumer Credit Law, and registration of other foreign lenders. However, Jersey's proposed approach is consistent with how the JFSC approaches the regulation of other overseas persons in the jurisdiction under the Financial Services Law.

Lending by overseas lenders with agents in Jersey

63) In the case of overseas lenders that have agents in Jersey, the intention is to provide a conditional exemption for the agent from the requirement to register with the JFSC and a limited regulatory regime for the lender.

64) It is understood that a significant proportion of the credit facilities offered by retailers and the motor trader derive from UK lenders.

65) Guernsey's position allows there to be no registration of the principal lender, including UK lenders, provided appointed retailers/motor traders follow the specified rules for the exemption to apply². The result of Guernsey's approach appears to be that the credit and lending market remains relatively buoyant but, ultimately, regulatory authorities have limited control over who operates in the jurisdiction and there are few local avenues for complaint/redress for consumers.

66) The Government proposes to require foreign, including UK, lenders that have agents in Jersey to register with the JFSC. However, the extent of regulation will be limited to their oversight of the agents to ensure they apply controls equivalent to those for Jersey Consumer Lending Firms, i.e.:

- a) each agent must be subject to a formal written contract of engagement with the Consumer Lending Firm and
- b) the conduct of the agent is the responsibility of the Consumer Lending Firm, and hence it must:

² Part 7.5 of Guernsey's Lending, Credit and Finance Rules and Guidance 2023 state that there must be a written agreement in place between appointed retailers and appointed motor traders and the principal lender (licensee) (albeit the principal lender might not be regulated in Guernsey if it operates in an equivalent jurisdiction, e.g., the UK). The licensee has responsibility to ensure the appointed retailer or appointed motor trader is aware of and acts in compliance with Guernsey's consumer credit rules, provides appropriate training to employees at the appointed retailer or appointed motor trader, particularly in respect of dealing with credit applications and recognising vulnerable customers.

- (1) ensure the agent is aware of and acts in compliance with the proposed regime and
- (2) provide appropriate support, with respect to the provision of its services, to the agent, including, but not limited to dealing with credit applications and recognising vulnerable customers

67) The regulations will be developed with this in mind, clarifying which apply to agents and hence their appointing firms.

Regulating agents of Jersey registered lenders

68) This includes lending through retailers, motor trade and similar businesses, where the lender is a Jersey regulated Consumer Credit Firm and such separate businesses provide credit to their customers by acting as an agent of the lending firm. The UK's consumer credit regime has the concept of an "appointed representative", who are supervised by regulated principal firms. The appointed representative is required to abide by the UK's consumer credit regulations as the principal firm will be penalised by the regulatory authorities if not.

69) We propose allowing businesses acting as agents for Jersey registered Consumer Credit Firms to be excluded from registration with the JFSC provided the principal lending firm ("**Consumer Lending Firm**") notifies the JFSC of which businesses act as an agent for it and complies with regulations (to be developed by the JFSC) regarding:

- a) each agent must be subject to a formal written contract of engagement with the Consumer Lending Firm and
- b) the conduct of the agent is the responsibility of the Consumer Lending Firm, and hence it must:
 - (1) ensure the agent is aware of and acts in compliance with the proposed regime and
 - (2) provide appropriate support, with respect to the provision of its services, to the agent, including, but not limited to dealing with credit applications and recognising vulnerable customers

Q29. Noting that there will be further consultation, please provide any comments you have on these initial proposals with respect to overseas lenders and lending arranged by agents.

How will the activities caught by the consumer credit regime be regulated?

70) To make certain of an effective consumer credit regime it is necessary for Government to ensure that the JFSC has sufficient power to establish minimum entry criteria for consumer credit service providers. The process by which the JFSC may register consumer credit service providers and issue licences should require that the consumer credit service provider's beneficial owners, board members, senior management and people in control functions demonstrate integrity and competence and that there are appropriate governance and internal controls in place, including specific controls to mitigate consumer protection risks.

Regulations in the existing Financial Services Law

71) To achieve compliance with the over-arching principles of the consumer credit regime, Consumer Credit Firms will be required to register with the JFSC and obtain a licence to operate (Part 2 of the Financial Services Law). There is a general prohibition on carrying on unauthorised financial service business punishable by imprisonment for a term not exceeding 7 years or a fine, or both.

72) The Financial Services Law, along with the Commission Law also addresses (non-exhaustively):

- a) Corporate governance, requiring prospective Principal and Key persons within a firm to seek a formal "no objection" from the JFSC prior to appointment
- b) Codes of Practice, which can be issued and revised by the JFSC, to provide an appropriately detailed and flexible regime
- c) The power for the JFSC to inspect Consumer Credit Firms and to obtain data on their businesses
- d) The power for the JFSC to issue directions and apply restrictions to licences issued to Consumer Credit Firm to address any issues
- e) The enabling of the Minister to issue Orders concerning Advertising and Accounting and Auditing matters, amongst others, on the recommendation of the JFSC and
- f) The power to impose civil penalties on firms for breaches of Codes of Practice

73) The JFSC issues guidance regarding the exercise of these powers, including on the authorisation process.

74) In line with feedback received from the 2018/2019 Consultation, it is envisaged the secondary legislation supporting the consumer credit regime will align with the general requirements of other financial services legislation with additional bespoke requirements built in as necessary.

Existing regulatory requirements

75) The JFSC will be responsible for putting in place appropriate regulation, including Codes of Practice. The Minister will also take forward the development of secondary legislation in consultation with the JFSC. The Codes of Practice and Secondary legislation will be the subject of future consultation. Generally, the Codes of Practice address:

- a) A registered person must conduct its business with integrity
- b) A registered person must have the highest regard for the interests of its clients
- c) A registered person must organise and control its affairs effectively for the proper performance of its business activities and be able to demonstrate the existence of adequate risk management systems
- d) A registered person must be transparent in its business arrangements
- e) A registered person must maintain, and be able to demonstrate the existence of, adequate financial resources and adequate insurance
- f) A registered person must deal with the JFSC in an open and co-operative manner
- g) A registered person must not make statements that are misleading, false or deceptive

76) Secondary legislation is typically used to establish requirements concerning advertising, financial accounts, compliance statements, auditors, client asset rules and the ability to appoint a manager, these being matters that concern both the registered person and other persons involved in its business.

77) The JFSC issues guidance on regulatory matters, usually in the form of Guidance Notes, as well as on the relevant processes. For example, it has a Personal Questionnaire process for prospective Principal and Key persons.

78) The JFSC also collects data from regulated firms on an annual basis, to better enable risk-based supervision.

New consumer credit regulatory requirements

79) In addition to the general standards, it is anticipated that the JFSC will put in place tailored requirements specifically for Consumer Credit Firms, regarding the following matters:

Pre-contractual requirements:

- a) **Disclosure of information:** clear information must be provided to consumers at an early pre-contract stage to enable consumers to make clear and informed choices as to whether a credit product is best suited to their individual and specific needs, though it should be for the Consumer Credit Firm to best decide how that information should

be communicated to facilitate the use of digital credit transactions as well as traditional paper-based credit transactions

- b) **Features of the agreements or arrangements:** certain features of the agreement or arrangement must be included in the pre-contractual information to enable the consumer to make an informed choice. These features include:
- (1) features which may make the credit to be provided under the agreement or arrangement unsuitable for particular types of use
 - (2) how much the consumer will have to pay periodically and, where the amount can be determined, in total under the agreement (specifically this should include the total cost of the credit, the annual percentage rate (“**APR**”) and installment amounts of repayments)
 - (3) the features of the agreement which may operate in a manner which would have a significantly adverse effect on the consumer in a way in which the consumer is unlikely to foresee
 - (4) the principal consequences for the consumer arising from a failure to make payments under the agreement at the times required by the agreement including legal proceedings and, where this is a possibility, repossession of the consumer’s home
 - (5) the effect of the exercise of any right to withdraw from the agreement and how and when this right may be exercised
- c) It is expected that a standardised definition of “total cost of credit” will be established along with a comprehensive definition of APR and a standardised formula for its calculation.

Contractual requirements:

- d) **Vulnerability checks:** Consumer Credit Firms must ensure that consumers with whom they are entering into an agreement have the legal capacity to do so and that the consumer understands the terms and conditions by which they will be bound – vulnerability checks are to be a requirement and the Consumer Credit Firm must identify vulnerable consumers and offer appropriate protections to such customers. The types of characteristics that could indicate a vulnerable customer are:
- (1) Age (both young and old)
 - (2) Low income
 - (3) Financial desperation
 - (4) Inexperience of financial matters
 - (5) Physical and mental health issues and/or disabilities
 - (6) Single parent/lack of family support network
 - (7) English as a second language
 - (8) Low literacy/learning difficulties
 - (9) Lack of internet access/technical knowledge
 - (10) Sensory impairment
- Situations that might increase the likelihood of an individual becoming vulnerable are:
- (11) Loss of income
 - (12) Loss of employment

- (13) Breakdown of relationship
- (14) Social isolation
- (15) Resilience – emotional/financial shock
- (16) Bereavement
- (17) Victim of crime or an accident
- (18) Addiction/gambling habit
- (19) Taking certain medication
- (20) Non-standard requirements/limited options

- e) **Affordability:** upon entering into any agreement or arrangement with a consumer a Consumer Credit Firm must first obtain reliable evidence of the consumer's ability to repay and an obligation to evidence responsible lending by formulating and holding on file an analysis of the ability of the borrower to repay in reasonably foreseeable circumstances provided only that the Consumer Credit Firm may assume the borrower continues to earn income sufficient to afford the loan. This should be done at the time of taking out the loan and when any adjustments or amendments are made to the terms of the loan.
- f) **High set up costs, high interest rates and unfair fees:** Consumer Credit Firms will face restrictions around business involving:
- (1) high set up costs or other ongoing fees or charges
 - (2) high interest rates or penalties
 - (3) agreements under which the level of fees, charges, interest or penalties changes, or some other disadvantage ensues as a result of a failure to repay within a certain period or in other specified cases or circumstances, and
 - (4) otherwise attracting unfair fees, charges, interest or penalties.
- g) **Cooling-off periods:** Consumer Credit Firms will be required to provide cooling-off periods to consumers (subject to exceptions this is expected to be 48 hours) and there will be rights of cancellation or rescission of, or withdrawal from agreements or arrangements or offers to enter into agreements or arrangements (particularly, but not exclusively, where same day lending agreements are entered into) including:
- (1) The cases or circumstances where cooling off periods and rights of cancellation, rescission or withdrawal do not apply
 - (2) The times at or periods within which, and the form and manner in which, any such right of cancellation or rescission or withdrawal may be exercised
 - (3) The giving of information as to any such right of cancellation, rescission or withdrawal, and the form and manner in which and the times at or periods within which, such information must be given
 - (4) The restitution of property and the making and recovery of payments where any such right of cancellation or rescission or withdrawal is exercised

Q30. Bearing in mind the JFSC will consult on these in detail later, please provide any comments you have on the proposed pre-contractual requirements.

Q31. Bearing in mind the JFSC will consult on these in detail later, please provide any comments you have on the proposed contractual requirements.

Unfair Terms

- 80) The draft Law proposes inserting a new paragraph Article 31A into the Financial Services Law, which will provide the States Assembly with the power, by regulations to make further provision to regulate the provision of consumer credit. It is anticipated that this power might be used to make provision preventing unfair terms from being used in consumer credit agreements.
- 81) Consumer Credit Firms will have to ensure that any agreement or arrangement entered into, and conditions of agreements and arrangements are not unfair. If a term is deemed unfair, then the term itself may be unenforceable and/or interest may not be chargeable on the capital sum of the loan.
- 82) The regulations may specify a test against which the fairness of a term in a consumer credit agreement can be assessed. Though further consultation will take place, Consumer Credit Firms may be required to consider:
- a) consumers' legitimate interests
 - b) whether a contract term may be unfair in all the circumstances
 - c) developments in legislation and guidance
- 83) The secondary legislation is expected to contain a non-exhaustive list of prescribed terms which will be deemed to be unfair in most circumstances if included in an agreement or arrangement. If a term in an agreement or arrangement is deemed unfair, then it is anticipated the secondary legislation will mean such a term may be unenforceable and/or interest on the amount borrowed may also not be charged.
- 84) At this stage the Government envisages that the non-exhaustive list of unfair terms will be similar to that found in Schedule 4 of Guernsey's Consumer Credit Law Rules and Guidance published by the Guernsey Financial Services Commission ([New Drafting Template \(gfsc.gg\)](#)). However, a proposed list of unfair terms will be consulted on later by the JFSC.
- 85) When deciding on whether a term is unfair, the specific circumstances of each case will be considered. There may be circumstances where a term, which would otherwise be considered unfair, would be permissible. The inclusion of one of these terms, will constitute a breach of the secondary legislation for which there will be a remedy.
- 86) The provisions will set out practices which are considered unfair and will include positive obligations upon Consumer Credit Firms to:
- a) ensure terms, conditions and practices do not cause a significant imbalance in the parties' respective rights and obligations to the detriment of the consumer

- b) prevent the enforceability, avoidance, modification, mitigation, disapplication or replacement of:
 - (1) unfair terms and conditions and
 - (2) the consequences of unfair practices and
 - (3) the terms and conditions which must or must not be included in agreements and arrangements relating to business regulated by the Financial Services Law
- c) comply with the form and manner of communication of agreements and arrangements relating to consumer credit business
- d) ensure compliance with regulation of the restriction of the rights of consumers, or restrictions on the liabilities of persons carrying on consumer credit business and notices to restrict such rights or liabilities
- e) comply with regulations relating to secondary agreements, linked agreements and series of agreements, and the considering of all terms and conditions affecting the rights, obligations and liabilities of the parties

87) The provisions may also provide additional regulatory powers for the JFSC and include additional rights, obligations, liabilities, remedies, penalties, sanctions and other consequences in respect of matters set out above.

Q32. Bearing in mind the JFSC will consult on these later, please provide any comments you have on the proposal to have a list of unfair terms which, if included in a regulated agreement or arrangement, may be unenforceable and/or mean interest cannot be charged on a regulated agreement or arrangement.

Remedies available to Consumer Credit Firms in event of default or non-compliance by consumer

- 88) The Government's intention is to protect consumers from unfair practices, but not to unnecessarily prevent lenders from enforcing contracts. The above mentioned pre-contractual and contractual requirements are intended to act as control mechanisms to guarantee full disclosure to consumers and to ensure transparency and fairness principles are adhered to.
- 89) There will be times when a consumer does not adhere to the terms of an agreement or arrangement. Consumer Credit Firms and consumers alike need certainty as to how such a breach or default will be dealt with. Regulations may include further specific provision regulating the circumstances in which enforcement action can be taken.
- 90) We have set out below an indication of the additional steps that the Government may, by secondary legislation, require Consumer Credit Firms to take before or when taking enforcement action:
- a) **Payment plans:** secondary legislation may require that no enforcement action should be taken where the consumer in default has entered into a payment plan which has been observed.
 - b) **Debt collection:** where a consumer has defaulted on the terms of an agreement or arrangement, there should be a requirement to attempt to resolve repayment issues before legal proceedings are issued. Secondary legislation might require that a claim for an unpaid debt cannot be made without evidence of such an attempt. It is possible that an amendment will be made to the Petty Debts Court Rules 2018 or other legislation to ensure this happens. It is intended that the current voluntary Code of Conduct for Jersey Debt Collection [Collecting debt: a collection agency's responsibilities \(gov.je\)](#) is incorporated into a specific Debt Collection Code of Practice to be consulted on and maintained by the JFSC.
- 91) For the avoidance of doubt, there will be no effect on applications to have someone declared *en désastre* under the Bankruptcy (Désastre) (Jersey) Law 1990 or for an application of *degrévèment*, though it is proposed that further provision is made with respect to the consequences of a successful *degrévèment*.

Q33. Bearing in mind the JFSC will consult on these later, please provide any comments you have on the proposed remedies available to Consumer Credit Firms in the event of default or non-compliance by a consumer.

Proposed amendments to the *degrèvement* regime

- 92) The process leading to and of *degrèvement* is a long-established statutory process for removing encumbrances (usually hypothecs – often referred to as mortgages) that exist over a piece of immovable property (such as a person's house). At the end of the *degrèvement* process the property that is subject to the mortgage is transferred to a creditor (usually a mortgage lender) who may then retain or sell the property to recover sums due to that creditor.
- 93) Before the *degrèvement* process can begin, it is necessary for the owner to be relieved of their rights over the immovable property. In practice this would usually occur through the making by a creditor of an application for an "involuntary cession" which is an involuntary severance of the rights of the owner over the property. Only once the involuntary cession has taken place can a *degrèvement* be ordered.
- 94) The involuntary cession procedure is currently provided for by a mixture of the *Loi (1832) sur le Décrets ("1832 Loi")*, the Royal Court Rules and the Court's Practice Directions. The procedure for *degrèvement* is set out in the *Loi 1880 sur la propriété foncière* (the "**1880 Loi**").
- 95) Under the *degrèvement* procedure, the creditor who receives the property ("**Tenant**") will be required to pay off any superior secured creditors (e.g., any with mortgages created earlier) and other priority claims (such as expenses incurred during the process). However, if after those are paid, the value of the property is greater than the debt owed to the Tenant, then the surplus is retained by the Tenant. The surplus does not go back to the debtor, who may still be liable to other creditors for debts owed to them and there is no duty to account for the surplus to other unsecured creditors either. The Tenant therefore retains any windfall they may receive from the sale of the property.
- 96) In the longer term, it is anticipated that the process for involuntary cession and *degrèvement* amongst other enforcement remedies, may require substantial reform. However, in the short term the Consumer Credit project is not considered the right vehicle to progress wider reform of this area.
- 97) However, the Government considers that the arrangements with respect to retention of any surplus by the Tenant, as they currently stand, are not compatible with the proposed consumer credit regime and should be addressed. Anecdotal evidence suggests that larger UK based lenders and banks securing property in Jersey do not use *degrèvement* in the residential secured lending market, but that some lenders taking charges over residential property do from time-to-time use or seek to use the *degrèvement* process recognising the potential for a windfall gain. Not only is the retention of a windfall by the tenant prejudicial to consumers, but it is also prejudicial to other inferior secured and unsecured creditors who retain their claim against a debtor whose property has been taken through a *degrèvement*, but who might have no other resources from which to meet their claims.
- 98) Initial input has been sought from the Law Society of Jersey, the Association of Restructuring and Insolvency Experts and other experts to ascertain whether amendments

can be made to the *degrèvement* regime to bring it more in line with the principles of the proposed consumer credit regime and having regard to equivalent procedures in Guernsey and the UK. Taking this input into account, the Government proposes that the *degrèvement* regime be amended as set out in Article 8 of the draft Law. The amendments will add a discretion for the Royal Court, when it invests a property in the tenant, to require that the property is sold and the surplus to be paid to the debtor, or into court. The Royal Court will also be able to make further orders to require the Tenant to achieve the best price on the sale of the property to avoid any transactions at an undervalue taking place.

99) It is expected that such provision may be used by the Royal Court to ensure that both the debtor's and other creditors' interests will be protected where there is expected to be a windfall gain for the Tenant from a *degrèvement*.

100) It is recognised that *degrèvement* entails some risks for the Tenant who takes the immovable property in exchange for the debt owed. In circumstances where there will be no surplus from the sale of the property, it may be inequitable for the Tenant to be required to sell. It is proposed that the Royal Court should only, therefore, require the Tenant to sell the property and return any surplus if, at the time of the *degrèvement*, the Royal Court is satisfied that a surplus will exist once the property is sold.

101) It is anticipated that further amendments might be made to Article 8 of the draft Law in light of the consultation responses the Government receives. In particular, it is recognised that further provision might be required in the draft Law with respect to the rights of the debtor and creditors other than the Tenant to participate in any proceedings where the Royal Court's new jurisdiction might be exercised.

Q34. Please provide any comments you have on how the Government expects the secondary legislation will be developed where there is a breach or default by a consumer who has entered into a regulated agreement or arrangement.

Q35. Please provide any comments you have on the proposals with respect to *degrèvement*, including with regard to participation in the hearings where the new discretion may be exercised.

Remedies available to Consumers in the event of unfair terms and practices by Consumer Credit Firms

102) In addition to there being remedies available to Consumer Credit Firms in the event of a breach or default on an agreement or arrangement, so too consumers must have redress in the event of malpractice by the use of unfair terms or for breaches of an agreement or arrangement by Consumer Credit Firms. There are various means by which redress can be achieved which are set out below.

Unenforceability of unfair terms and/or interest

103) As indicated above, it is anticipated that regulations made under a new power will provide that if a term is unfair then it will be deemed unenforceable and/or interest may not be charged on all, or part of the sum borrowed.

104) As such, in the first instance, if a consumer believes an agreement or arrangement, they have entered into contains an unfair term they will be expected to complain to the Consumer Credit Firm and require the term to be removed from the agreement or arrangement or sufficiently modified so that the term is no longer unfair. It may be that the consumer also has a right to the removal of any interest charges because of the unfair term. It is for this reason Consumer Credit Firms will be expected under the proposed regime to have in place and operate complaints policies and procedures.

Redress via CIFO

105) Consumer Credit activities are, and will continue to be, covered by CIFO. The regime will provide a clear basis for it to handle complaints from consumers.

106) CIFO has the authority to, where appropriate:

- a) award compensation payable by a Consumer Credit Firm to a consumer up to £150,000 and
- b) direct a Consumer Credit Firm to take actions to resolve the situation giving rise to the complaint

107) It is intended to make consequential changes to the Ombudsman Law to clarify the ongoing coverage, including as earlier noted regarding the definition of consumer.

Redress via legal proceedings

108) In the event a Consumer Credit Firm does not satisfactorily resolve a consumer's complaint, a consumer may take direct action against a Consumer Credit Firm in the courts. For smaller claims under the Petty Debts Court threshold (currently £30,000), claims can be dealt with relatively quickly and cheaply by consumers themselves in the Petty Debts Court. For a claim of £30,000 and over, consumers would be required to bring proceedings in the Royal Court.

109) In the case of a breach of the proposed regime that results in criminal sanctions, Trading Standards will be given authority under the Consumer Protection Law to take enforcement action against Consumer Credit Firms.

Q36. Please provide any comments you have on how we expect the secondary legislation will be developed where there is a breach of the regulations by a Consumer Credit Firm.

Timeline to introduction of proposed regime

- 110) An indicative timeline has been produced to give an idea of when we expect certain stages to take place to ensure 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.
- 111) A copy of the timeline can be found at Appendix 4. In short, and subject to the outcome of this and future consultations, we anticipate that the proposed regime will “go live” by the end of 2024 with Consumer Credit Firms having had a period of approximately six months prior to this to register with the JFSC.

Q37. Please provide any comments you have on the indicative timeline.

Q38. Overall, do you support the proposals set out in this consultation paper to regulate consumer credit business and activities that are ancillary to consumer credit? Please explain.



Consultation: Consumer Credit Regime: Proposed Regulation Appendix 1



Jersey

DRAFT FINANCIAL SERVICES (AMENDMENT No. 5) (JERSEY) LAW 202-

Contents

Article

PART 1		2
FINANCIAL SERVICES (JERSEY) LAW 1998 AMENDED		2
1	Financial Services (Jersey) Law 1998 amended	2
2	Article 1 (general interpretation) amended	2
3	Article 2 ("financial service business" defined) amended	2
4	Article 31A inserted	3
5	Schedule 1A inserted	4
6	Schedule 2 (exemptions) amended	9
7	Schedule 5 (transitional provisions) amended	12
PART 2		13
RELATED AMENDMENT AND FINAL PROVISIONS		13
8	Loi (1880) sur la propriété foncière amended	13
9	[Consequential, transitional and supplementary provision	14
10	Citation and commencement	14



Jersey

DRAFT FINANCIAL SERVICES (AMENDMENT No. 5) (JERSEY) LAW 202-

A LAW to amend the Financial Services (Jersey) Law 1998 in relation to credit business

<i>Adopted by the States</i>	<i>[date to be inserted]</i>
<i>Sanctioned by Order of His Majesty in Council</i>	<i>[date to be inserted]</i>
<i>Registered by the Royal Court</i>	<i>[date to be inserted]</i>
<i>Coming into force</i>	<i>[date to be inserted]</i>

THE STATES, subject to the sanction of His Most Excellent Majesty in Council, have adopted the following Law –

PART 1

FINANCIAL SERVICES (JERSEY) LAW 1998 AMENDED

1 Financial Services (Jersey) Law 1998 amended

This Part amends the Financial Services (Jersey) Law 1998.

2 Article 1 (general interpretation) amended

In Article 1(1), after the definition “compliance officer” there is inserted –

“ “credit business” has, subject to any Order under Article 4, the meaning given to that expression by Article 2(12);”.

3 Article 2 (“financial service business” defined) amended

In Article 2 –

(a) in paragraph (1) for “or AIF services business” there is substituted “, AIF services business or credit business”;

(b) after paragraph (11) there is inserted –

“(12) A person carries on credit business so far as the person carries on an activity described in Schedule 1A.”

4 Article 31A inserted

After Article 31 there is inserted –

“31A Powers in relation to consumer protection

- (1) The States may make Regulations relating to consumer protection in connection with credit business.
- (2) Regulations made under this Article may make provision in respect of the following matters -
 - (a) requiring persons carrying on business regulated by this Law to take steps to ensure that consumers with whom they are entering into an agreement have legal capacity to enter into the agreement and understand the terms and conditions by which they will be bound;
 - (b) business regulated by this Law involving high interest, short term or unsecured lending, and agreements –
 - (i) incurring high set-up or other initial or ongoing fees or charges,
 - (ii) attracting high interest rates or penalties,
 - (iii) under which the level of fees, charges, interest or penalties changes, or some other disadvantage ensues, as a result of a failure to repay within a certain period or in other specified cases or circumstances, and
 - (iv) otherwise attracting unfair fees, charges, interest or penalties;
 - (c) agreements entered into in contravention of the provisions of this Law and the consequences of such contraventions, including the enforceability, avoidance, modification, mitigation, disapplication or replacement of –
 - (i) such agreements, and
 - (ii) the terms and conditions of such agreements;
 - (d) cooling off periods and rights of cancellation or rescission of, or withdrawal from, agreements or offers to enter into agreements, including -
 - (i) the cases or circumstances where cooling off periods and rights of cancellation, rescission or withdrawal do or do not apply,
 - (ii) the times at or periods within which, and the form and manner in which, any such right of cancellation, rescission or withdrawal may be exercised,
 - (iii) the giving of information as to any such right of cancellation, rescission or withdrawal, and the form and manner in which, and the times at or periods within which, such information must be given,
 - (iv) the restitution of property and the making and recovery of payments where any such right of cancellation, rescission or withdrawal is exercised;
 - (e) unfair terms and conditions of agreements and unfair practices, including -

- (i) terms, conditions and practices deemed to be unfair, including by reason of their causing a significant imbalance in the parties' respective rights and obligations to the detriment of the consumer,
 - (ii) the consequences of the inclusion of unfair terms and conditions and the pursuit of unfair practices,
 - (iii) the enforceability, avoidance, modification, mitigation, disapplication or replacement of -
 - (A) unfair terms and conditions, and
 - (B) the consequences of unfair practices, and
 - (iv) the terms and conditions which must or must not be included in agreements;
 - (f) the form and manner of communication of agreements relating to business regulated by this Law;
 - (g) the regulation of –
 - (i) restrictions on the rights of consumers, or restrictions on the liabilities of persons carrying on business regulated by this Law, and
 - (ii) notices (however communicated) which restrict such rights or liabilities;
 - (h) secondary agreements, linked agreements and series of agreements, and the taking into account of all terms and conditions affecting the rights, obligations and liabilities of the parties;
 - (i) the powers of the Commission and the rights, obligations, liabilities, remedies, penalties, sanctions and other consequences in respect of matters set out in the preceding sub-paragraphs;
 - (j) the exercise by the Commission of its functions, including its powers to grant, refuse, suspend, revoke and impose conditions in respect of registrations and to issue directions, in respect of contraventions and other matters set out in the preceding sub-paragraphs.
- (3) In paragraph (2), “agreements” includes regulated agreements and other contracts, engagements and transactions.

5 Schedule 1A inserted

After Schedule 1 there is inserted –

“SCHEDULE 1A

(Article 2(12))

CREDIT BUSINESS**PART 1 - INTERPRETATION****1 Interpretation**

In this Schedule and Schedule 2 –

“borrower” means a consumer who receives credit under a consumer credit agreement or a secured lending arrangement;

“consumer credit agreement” means an agreement between a consumer and another person (“B”) under which B provides the consumer with credit of any amount;

“consumer hire agreement” means an agreement between an owner and a hirer for the hiring of goods to the hirer (including a hire-purchase agreement) which is capable of subsisting for more than three months;

“credit” includes a cash loan and any other form of financial accommodation;

“consumer” means –

- (a) an individual acting for purposes wholly or mainly outside that individual's trade, business or profession, or
- (b) [a person acting by way of business] which employs fewer than 10 persons [and whose annual turnover or annual balance sheet total does not exceed [GBP 2 million][EUR 2 million]];

“hire-purchase agreement” has the meaning given in Article 1 of the Supply of Goods and Services (Jersey) Law 2009;

“hirer” means a consumer who receives goods under a consumer hire agreement;

“lender” means –

- (a) the person providing credit under a consumer credit agreement or a secured lending arrangement by way of business, or
- (b) a person who exercises or has the right to exercise the rights and duties of a person who provided credit under a consumer credit agreement or a secured lending arrangement;

“owner” means –

- (a) the person who provides goods under a consumer hire agreement by way of business, or
- (b) a person who exercises or has the right to exercise the rights and duties of a person who provided goods under a consumer hire agreement;

“regulated consumer credit agreement” means a consumer credit agreement which is entered into on or after [insert date];

“regulated consumer hire agreement” means a consumer hire agreement which is entered into on or after [insert date];

“regulated secured lending arrangement” means a secured lending arrangement which is entered into on or after [*insert date*];

“secured lending arrangement” means an arrangement which creates, or may create, a security for the repayment of a loan or for the discharge of another obligation against immovable property in Jersey used for residential purposes (including, for example, a hypothec, under the Loi (1880) sur la propriété foncière and a security interest under the Security Interests (Jersey) Law 2012).

PART 2 – ENTERING INTO AND EXERCISING RIGHTS UNDER REGULATED AGREEMENTS AND ARRANGEMENTS

2 Entering into regulated agreements or arrangements

- (1) A person who enters into a regulated consumer credit agreement or a regulated secured lending arrangement as lender carries on credit business.
- (2) A person who enters into a regulated consumer hire agreement as owner carries on credit business.

3 Exercising rights under regulated agreements or arrangements

- (1) A lender or other person who exercises, or has the right to exercise, the lender’s rights and duties under a regulated consumer credit agreement or a regulated secured lending arrangement carries on credit business.
- (2) An owner or other person who exercises, or has the right to exercise, the owner’s rights and duties under a regulated consumer hire agreement carries on credit business.

PART 3 – ADVISING ON, ARRANGING AND ADMINISTERING REGULATED AGREEMENTS AND ARRANGEMENTS

4 Advising on regulated agreements and arrangements

A person who advises another person (“A”) carries on credit business where –

- (a) the advice is given to A in A’s capacity as a borrower or potential borrower and is advice on the merits of A –
 - (i) entering into a particular regulated consumer credit agreement or regulated secured lending arrangement, or
 - (ii) varying the terms of a regulated consumer credit agreement or regulated secured lending arrangement entered into by A in such a way as to vary A’s obligations under that agreement or arrangement; or
- (b) the advice is given to A in A’s capacity as a hirer or potential hirer and is advice on the merits of A –
 - (i) entering into a particular regulated consumer hire agreement, or
 - (ii) varying the terms of a regulated consumer hire agreement entered into by A in such a way as to vary A’s obligations under that agreement.

5 Administering regulated agreements or arrangements

- (1) A person who administers a regulated consumer credit agreement, a regulated consumer hire agreement or a regulated secured lending arrangement carries on credit business.
- (2) “Administering” a regulated consumer credit agreement, a regulated consumer hire agreement or a regulated secured lending arrangement means either or both of –
 - (a) notifying the borrower (or the hirer, as the case may be) of changes in interest rates or payments due under the agreement or arrangement, or of other matters of which the agreement or arrangement requires the borrower (or the hirer) to be notified; and
 - (b) taking any necessary steps for the purposes of collecting or recovering payments due under the agreement or arrangement from the borrower (or the hirer),

but a person is not to be treated as administering a regulated consumer credit agreement, a regulated consumer hire agreement or a regulated secured lending arrangement merely because the person has, or exercises, a right to take action for the purposes of enforcing the agreement or arrangement (or to require that such action is or is not taken).

6 Arranging regulated agreements or arrangements

A person carries on credit business where the person makes arrangements –

- (a) for another person to enter into a regulated consumer credit agreement or a regulated secured lending arrangement as borrower;
- (b) for another person to enter into a regulated consumer hire agreement as hirer;
- (c) for another person to vary the terms of a regulated consumer credit agreement or a regulated secured lending arrangement entered into by that person as borrower in such a way as to vary that person’s obligations under that agreement or arrangement;
- (d) for another person to vary the terms of a regulated consumer hire agreement entered into by that person as hirer in such a way as to vary that person’s obligations under that agreement;
- (e) with a view to a person who participates in the agreements or arrangements entering into a regulated consumer credit agreement or a regulated secured lending arrangement as borrower;
- (f) with a view to a person who participates in the agreements entering into a regulated consumer hire agreement as hirer;
- (g) to enter into a regulated consumer credit agreement or a regulated secured lending arrangement with a borrower on behalf of a lender;
- (h) to enter into a regulated consumer hire agreement with a hirer on behalf of an owner.

PART 4 – CREDIT BROKING**7 Credit broking**

- (1) A person carries on credit business where the person –
 - (a) effects an introduction of an individual who wishes to enter into a consumer credit agreement or secured lending arrangement to another person with a view to that other person entering into a regulated consumer credit agreement or regulated secured lending arrangement as lender by way of business;
 - (b) effects an introduction of an individual who wishes to enter into a consumer hire agreement to another person with a view to that other person entering into a regulated consumer hire agreement as owner by way of business;
 - (c) effects an introduction of an individual who wishes to enter into a consumer credit agreement, secured lending arrangement or consumer hire agreement (as the case may be) to a person who carries on an activity of the kind described in sub-paragraph (a) or (b) by way of business;
 - (d) presents or offers an agreement or arrangement which would (if entered into) be a regulated consumer credit agreement or regulated secured lending arrangement;
 - (e) assists an individual by undertaking preparatory work with a view to that individual entering into a regulated consumer credit agreement or a regulated secured lending arrangement;
 - (f) enters into a regulated consumer credit agreement or a regulated secured lending arrangement on behalf of a lender.
- (2) For the purposes of paragraph (1) it is immaterial whether the consumer credit agreement, secured lending arrangement or consumer hire agreement is subject to the law of a jurisdiction outside Jersey.
- (3) A person does not carry out an activity under paragraph (1) if the person only provides details of potential lenders or owners (as the case may be) to an individual.
- (4) In paragraph (1) “regulated consumer credit agreement”, “regulated secured lending arrangement” and “regulated consumer hire agreement” include an agreement or arrangement that would be a regulated consumer credit agreement, regulated secured lending arrangement or regulated consumer hire agreement but for any exemptions set out in Schedule 2.

PART 5 – ACTIVITIES IN RELATION TO DEBT**8 Debt adjusting**

- (1) A person carries on credit business where the person, in relation to debts due under a consumer credit agreement or secured lending arrangement –
 - (a) negotiates with the lender, on behalf of the borrower, terms for the discharge of a debt;

- (b) takes over, in return for payments by the borrower, the customer's obligation to discharge a debt; or
 - (c) carries on any similar activity concerned with the liquidation of a debt.
- (2) A person carries on credit business where the person, in relation to debts due under a consumer hire agreement –
- (a) negotiates with the owner, on behalf of the hirer, terms for the discharge of a debt,
 - (b) takes over, in return for payments by the hirer, the hirer's obligation to discharge a debt, or
 - (c) carries on any similar activity concerned with the liquidation of a debt.

9 Debt-counselling

- (1) A person who gives advice to a borrower about the liquidation of a debt due under a consumer credit agreement or secured lending arrangement carries on credit business.
- (2) A person who gives advice to a hirer about the liquidation of a debt due under a consumer hire agreement carries on credit business.

10 Debt-collecting

- (1) A person who takes steps to procure the payment of a debt due under a consumer credit agreement or secured lending arrangement carries on credit business.
- (2) A person who takes steps to procure the payment of a debt due under a consumer hire agreement carries on credit business.

11 Debt administration

- (1) A person carries on credit business where the person takes steps –
 - (a) to perform duties under a consumer credit agreement or a secured lending arrangement on behalf of the lender; or
 - (b) to exercise or to enforce rights under a consumer credit agreement or a secured lending arrangement on behalf of the lender, so far as the taking of those steps is not debt-collecting.
- (2) A person carries on credit business where the person takes steps –
 - (a) to perform duties under a consumer hire agreement on behalf of the owner; or
 - (b) to exercise or to enforce rights under a consumer hire agreement on behalf of the owner, so far as the taking of those steps is not debt-collecting.
- (3) Sub-paragraphs (1) and (2) do not apply in so far as the activity is an activity of the kind described in paragraph 10 (debt collecting)."

6 Schedule 2 (exemptions) amended

In Schedule 2, at the end there is inserted –

“PART 6 – CREDIT BUSINESS**24 Certain business loans**

- (1) The carrying on of credit business in relation to a consumer credit agreement if –
 - (a) the lender provides the borrower with credit exceeding the amount for the time being specified in Article 1(1) of the Petty Debts Court (Miscellaneous Provisions) (Jersey) Law 2000, and
 - (b) the agreement is entered into by the borrower wholly or predominantly for the purposes of a business carried on, or intended to be carried on, by the borrower.
- (2) The carrying on of credit business in relation to a consumer hire agreement if –
 - (a) the hirer is required by the agreement to make payments exceeding the amount for the time being specified in Article 1(1) of the Petty Debts Court (Miscellaneous Provisions) (Jersey) Law 2000, and
 - (b) the agreement is entered into by the hirer wholly or predominantly for the purposes of a business carried on, or intended to be carried on, by the hirer.

25 Certain trade agreements

The carrying on of consumer credit business in relation to a consumer credit agreement that is made in connection with trade in goods or services –

- (a) between Jersey and a jurisdiction outside Jersey;
- (b) within a jurisdiction outside Jersey; or
- (c) between jurisdictions outside Jersey, and

the credit is provided to the borrower in the course of a business carried on by the borrower.

26 Advice given in newspapers etc.

Advice of the kind mentioned in paragraph 4 of Schedule 1A given in any newspaper, journal, magazine, television broadcast, teletext service, sound broadcast or electronic information service, or in any other periodical publication, broadcast or electronic information service if –

- (a) the principal purpose of the periodical publication, broadcast or service, taken as a whole and including any advertisements contained in it, is not the giving of that advice, or
- (b) the publisher, broadcaster, service provider or producer of the periodical publication, broadcast or service does not derive any direct benefit from any business resulting from the advice given therein.

27 Activities carried on by trustees

- (1) Advice of the kind mentioned in paragraph 4 of Schedule 1A given by a person as trustee to –
 - (a) a co-trustee for the purposes of the trust; or
 - (b) a beneficiary under the trust concerning the person's interest in the trust fund.
- (2) The making of arrangements under paragraph 6 of Schedule 1A by a person acting as trustee for or with a view to a transaction which is or is to be entered into –
 - (a) by that person and a fellow trustee (acting in their capacity as such); or
 - (b) by a beneficiary under the trust.
- (3) This paragraph does not apply if the person giving the advice or making the arrangements is remunerated for that activity in addition to any remuneration the person receives as trustee, and for these purposes a person is not to be regarded as receiving additional remuneration merely because the remuneration is calculated by reference to time spent.

28 Advice given in the course of a profession or business (other than financial service business)

- (1) Advice of the kind mentioned in paragraph 4 of Schedule 1A –
 - (a) given in the course of carrying on any profession or business which does not otherwise consist of financial service business, and
 - (b) which may reasonably be regarded as a necessary part of other services provided in the course of that profession or business.
- (2) This paragraph does not apply if the giving of advice is remunerated separately from the other services.

29 Agreements for supply of essential services

The carrying on of credit business in relation to a consumer hire agreement if –

- (a) the owner is a body corporate which is authorised by or under an enactment to supply gas, electricity or water, and
- (b) the subject of the agreement is a meter or metering equipment which is used (or is to be used) in connection with the supply of gas, electricity or water.

30 Activities carried on by members of the legal profession etc

- (1) The carrying on of an activity described in paragraphs 7 to 11 of Schedule 1A –
 - (a) by a practising advocate or practising solicitor acting in that capacity, or
 - (b) by a person working under the supervision of a practising advocate or practising solicitor acting in that capacity,

but only in so far as the activity is regulated by the code or rules of professional conduct issued under the bye-laws of the Law Society of Jersey under the Law Society of Jersey Law 2005.

- (2) In this paragraph –
- (a) “practising advocate” means an advocate who is qualified to act as such under the Advocates and Solicitors (Jersey) Law 1997;
 - (b) “practising solicitor” means –
 - (i) a solicitor who is qualified to act as such under the Advocates and Solicitors (Jersey) Law 1997, or
 - (ii) a person who is qualified to act as a solicitor under any of section 1 of the Solicitors Act 1974 of the United Kingdom, Article 4 of the Solicitors (Northern Ireland) Order 1976 or section 4 of the Solicitors (Scotland) Act 1980 and who is, for the time being, practising as such from or within Jersey.

31 Activities carried on by liquidators

The carrying on of an activity described in paragraphs 7 to 11 of Schedule 1A by a person acting as a liquidator under the Bankruptcy (Désastre) (Jersey) Law 1990 or the Companies (Jersey) Law 1991 or acting in reasonable contemplation of that person’s appointment as such a liquidator.

32 Buy-to-let secured lending arrangements

- (1) The carrying on of credit business in relation to a buy-to-let secured lending arrangement which provides that the immovable property subject to the secured lending arrangement cannot at any time be occupied as a dwelling by the borrower or by a related person, and is to be occupied as a dwelling on the basis of a rental agreement.
- (2) In this paragraph “related person”, in relation to a person (“P”), means –
 - (a) P’s spouse or civil partner,
 - (b) a person (whether or not of the opposite sex) whose relationship with P has the characteristics of the relationship between husband and wife, or
 - (c) P’s parent, brother, sister, child, grandparent or grandchild.”

7 Schedule 5 (transitional provisions) amended

In Schedule 5, after paragraph 3 there is inserted –

“4 Credit business

- (1) Despite anything in this Law, a person who carried on credit business at any time during the [6 months] immediately before the commencement day is not to be taken to have committed an offence under Article 7(4) by virtue of any action that is taken, or not taken, by the person in the course of carrying on that business during the period –

- (a) on and from the commencement day until the day [6 months] after the commencement day or, if a day is specified under sub-paragraph (3) in relation to the person, until that day; or
 - (b) if the person applies, before [6 months] after the commencement day, for registration under this Law as a person entitled to carry on credit business, on and from the commencement day until the day the application is finally determined (including as a result of an appeal to the Court under Article 11) or is withdrawn.
- (2) The following modifications to the provisions of this Law apply to and in relation to a person to whom sub-paragraph (1) applies and who has applied for registration under this Law as a person entitled to carry on credit business –
- (a) a reference in this Law to the period during which a person is registered is taken to be a reference to the period between –
 - (i) the date of the application, and
 - (ii) the date on which the application is granted or refused by the Commission, is finally determined (including as a result of an appeal to the Court under Article 11) or is withdrawn;
 - (b) a reference in this Law to the terms of a registration is taken to be a reference to the terms of the application; and
 - (c) a reference in Article 11 to the Commission, acting under Article 9, revoking a registration is taken to be a reference to the Commission refusing an application under Article 9.
- (3) On the application of a person, the Commission may, by notice in writing, specify a day in relation to the person for the purposes of sub-paragraph (1)(a).
- (4) The Commission must not specify a day under paragraph (3) unless –
- (a) the Commission is satisfied that there are exceptional circumstances that justify the extension of the period during which the person will not be taken to have committed an offence under Article 7(4) by reason only of carrying on credit business; and
 - (b) the day is not later than [12 months] after the commencement day.
- (5) In this paragraph, “commencement day” means the day on which the Financial Services (Amendment No.5) (Jersey) Law 202- comes into force.”.

PART 2

RELATED AMENDMENT AND FINAL PROVISIONS

8 **Loi (1880) sur la propriété foncière amended**

- (1) This Article amends the Loi (1880) sur la propriété foncière.
- (2) In Article 93, after “were sent” there is inserted “, together with a statement of valuation of the property *en dégrèvement* [or the corporeal hereditament of which the property forms part] [indicating the means used to reach the valuation].”
- (3) After Article 96 there is inserted -
 - “96A Where the Royal Court, [having reviewed the statement of valuation submitted under Article 93, any submissions of [the tenant or insolvent], and

such other information as it considers necessary,] is satisfied that a surplus would exist if the property comprising the tenancy were sold, the Court may make such orders as it thinks fit to secure that -

- (a) the property is sold [as soon as possible];
- (b) a fair market value is realised; and
- (c) any surplus is paid [into the Court or] [to the insolvent].

96B For the purposes of Article 96A, “surplus” means any amount left over from the sale of the property following the settlement of the amount outstanding on the debt owed to the tenant, the tenant’s reasonable expenses generated in the course of realising the security, and any other amount paid or payable by the tenant in satisfaction of the obligations arising by virtue of their tenancy under this Law.]”

9 [Consequential, transitional and supplementary provision

The States may by Regulations make such amendments to any enactment, and such transitional and supplementary provision, and as appear to the States to be necessary or expedient in consequence of any amendment made by this Law.]

10 Citation and commencement

This Law may be cited as the Financial Services (Amendment No. 5) (Jersey) Law 202- and comes into force [7 days after it is registered].

EXPLANATORY NOTE

The Financial Services (Amendment No. 5) (Jersey) Law 202- amends the Financial Services (Jersey) Law 1998 in relation to the regulation of credit business.

Part 1 (Articles 1 to 7) amends the 1998 Law as follows:

Article 2 inserts a definition of “credit business” referencing new Article 2(12) inserted by *Article 3*, which provides that a person carries on credit business so far as the person carries on an activity described in Schedule 1A (inserted by *Article 5*).

Article 4 inserts new Article 31A which provides that the States may make Regulations relating to consumer protection in connection with credit business. The Regulations may make provision in respect of matters including: legal capacity; interest; consequences of agreements entered into in contravention of the Law; cooling-off periods and rights to cancel, rescind or withdraw from agreements; unfair terms and practices; the form and manner of communication with consumers; regulation of the restriction of rights of consumers; secondary and linked agreements; and the powers and functions of the Commission.

Article 5 inserts new Schedule 1A which describes the activities comprising credit business. Paragraph 1 contains definitions including “borrower”, “consumer” and “lender”. Paragraphs 2 to 11 set out various forms of carrying on a credit business in certain circumstances including: entering into regulated consumer credit, secured lending or consumer hire agreements or exercising rights under such agreements; advising on regulated agreements and arrangements; administering or arranging regulated agreements and arrangements; credit broking; and activities relating to debt such as debt adjusting, debt-counselling; debt-collecting and debt administration.

Article 6 inserts new Part 6 into Schedule 2 to specify certain exemptions from credit business. These include: certain business loans; certain trade agreements; advice given in newspapers etc, activities carried on by trustees; advice given in the course of carrying on any profession or business which does not otherwise consist of financial service business; agreements for the supply of essential services; certain advice given by lawyers; activities carried on by liquidators; and buy to let secured lending arrangements.

Article 7 inserts new paragraph 4 into Schedule 5 to make transitional provision in relation to credit business.

Part 2 (Articles 8 to 10) includes a related amendment and final provisions.

Article 8 amends the Loi (1880) sur la propriété foncière by inserting new Article 96A which empowers the Royal Court, if satisfied that a surplus (as defined) would exist if property *en dégrèvement* were sold, to make such orders as it thinks fit to secure sale of the property at a fair market value and to deal with the surplus.

Article 9 provides that the States may by regulation make consequential amendments, and such transitional and supplementary provision, as appear to the States to be necessary or expedient in consequence of any amendment made by this Law.

Article 10 gives the citation and provides that this Law comes into force [7 days after it is registered].



Consultation: Consumer Credit Regime: Proposed Regulation Appendix 2

Appendix 2

You can respond to these questions:

- by going to gov.ie/consultations and completing the online version of the survey
- by email to Economy@gov.ie
- by post to FAO Julie Keir, Associate Director,
Department for the Economy,
19-21 Broad Street,
St Helier, JE2 3RR

No.	Question
1.	Please provide any comments you have on the proposal to establish “consumer credit business” as a class of regulated business under the Financial Services Law.
2.	Do you agree that Consumer Credit Firms should be licensed by the JFSC? If not, please explain.
3.	Please provide any comments you have on the core principles that will shape the regulation of Consumer Credit Firms.
4.	Do you agree with the scope of the activities that the Government proposes are regulated? If not, please explain.
5.	Please provide any comments you have on the definition of “consumer”.
6.	Please provide any comments you have on the definition of “micro-enterprise”.
7.	Do you agree that the monetary denomination in the definition of “micro-enterprise” should be expressed in Pounds Sterling as opposed to Euros? If not, please explain.
8.	Do you think that the reference to monetary value of the balance sheet or annual turnover should be removed entirely from the definition of “micro-enterprise” so that it is determined by the number of FTE’s only? Please explain.
9.	Please provide any comments you have on the possibility of amending the definition of “micro-enterprise” in the Ombudsman Law so that it reflects the proposed definition of “micro-enterprise” in the Financial Services Law.
10.	Do you agree with the definition of “consumer credit business”? If not, please explain.
11.	Please provide any comments you have on the definitions proposed for “consumer credit agreement” or “consumer hire agreement”.
12.	Please provide any comments you have on the proposed definition of “secured lending arrangement”.
13.	Do you agree with the proposals to regulate the entering into and exercising rights under regulated agreements and secured lending arrangements? If not, please explain.
14.	Do you agree that “person” should be interpreted widely and include an individual or legal person carrying out one of the activities caught by the consumer credit regime by way of business? If not, please explain why.
15.	Please provide any comments you have on the inclusion of BNPL agreements in the regime.
16.	Do you agree with the proposals that bring “advising” within the scope of the proposed regime? If not, why not?
17.	Please provide any comments you have on the proposals relating to “administering” and bringing the activity within scope of the proposed regime.

18.	Please provide any comments you have relating to the proposals to bring “arranging” into scope of the Financial Services Law.
19.	Please provide any comments you have on the proposals relating to “credit broking”.
20.	Please provide any comments you have on the proposals bringing “debt adjusting”, “debt counselling”, “debt collecting” or “debt administration” into scope.
21.	Do you consider yourself to be a private lender? If so, please outline what characteristics should be used to distinguish private lenders for these purposes.
22.	Do you have any specific concerns as to the regulation of private lenders and any variations that you think should apply to address your concerns? If so, please explain.
23.	Are there any categories of private lender that you think ought to be exempt from the draft Law? If so, please explain what categories should be exempt and why.
24.	The draft Law proposes a six-month transitional period for those who are to become regulated to comply with the regime once legislation is enacted. Do you think an additional transitional period is required to enable individual private lenders to comply with their obligations under the draft Law? Please explain your answer.
25.	Do you agree with the proposed exemptions to the proposed regime? If not, please explain.
26.	Are there any other exemptions that you think should be included in the Financial Services Law that we have not included? If so, please provide details.
27.	Do you agree that regulation of consumer credit business should only apply to consumer credit business entered into after the legislation comes into force? If not, why not?
28.	Bearing in mind the JFSC will consult later, please provide any comments you have on the proposed further exemptions.
29.	Noting that there will be further consultation, please provide any comments you have on these initial proposals with respect to overseas lenders and lending arranged by agents.
30.	Bearing in mind the JFSC will consult on these in detail later, please provide any comments you have on the proposed pre-contractual requirements.
31.	Bearing in mind the JFSC will consult on these in detail later, please provide any comments you have on the proposed contractual requirements.
32.	Bearing in mind the JFSC will consult on these in detail later, please provide any comments you have on the proposal to have a list of unfair terms which, if included in a regulated agreement or arrangement, may be unenforceable and/or mean interest cannot be charged on a regulated agreement or arrangement.
33.	Bearing in mind the JFSC will consult on these in detail later, please provide any comments you have on the proposed remedies available to Consumer Credit Firms in the event of default or non-compliance by a consumer.
34.	Please provide any comments you have on how Government expects the secondary legislation to be developed where there is a breach or default by a consumer who has entered into a regulated agreement.
35.	Please provide any comments you have on the proposed further exemptions the proposals with respect to dégrèvement, including with regard to participation in the hearings where the new discretion may be exercised.
36.	Please provide any comments you have on how we expect the secondary legislation will be developed where there is a breach of the regulations by a Consumer Credit Firm.
37.	Please provide any comments you have on the indicative timeline.
38.	Overall, do you support the proposals set out in this consultation paper to regulate consumer credit business and activities that are ancillary to consumer credit? Please explain.



Consultation: Consumer Credit Regime: Proposed Regulation Appendix 3

Appendix 3

SUMMARY OF 2018/2019 CONSULTATION

On 19 November 2018, the Office of the Chief Executive published a Consultation Paper proposing regulation of consumer lending which would bring the consumer lending business fully within the scope of financial services regulation and thereby directly within the oversight of the JFSC.

The paper also sought input on the scope of the proposals – who should be covered by regulation and what types of services and products ought to be in scope. Government invited feedback from all interested parties on the proposals which, if brought forward, would amend aspects of Jersey’s regulatory laws and widen the supervisory scope of the JFSC and further clarify the role of the Channel Islands Financial Ombudsman (CIFO).

The Consultation Paper also considered the high-level effects of regulating consumer lending. The consultation closed on 31 January 2019.

A copy of the 2018/2019 consultation can be accessed via the following link [Consultation on proposed regulation of consumer lending \(gov.je\)](#).

OVERVIEW OF CONSULTATION RESPONSES

Fourteen responses to the Consultation were received by the Government of Jersey and Jersey Finance Limited. These responses came from one law firm, three mortgage providers, several credit providers, an Advocate responding in their individual capacity, Jersey Consumer Council, and Jersey Finance Limited.

All respondents supported the proposal for consumer lending to come under the supervision of JFSC. There was broad agreement on a number of proposals although reservations were expressed by some respondents as to the need to better align the proposed regulatory regime with those in the UK, Guernsey and EU as well as ensuring only consumer-like lending activity is in scope of proposals. This is discussed in more detail below.

SUMMARY OF PROPOSALS

Government proposes to introduce proportionate regulation of both secured consumer lending, where the consumer offers an asset such as a house or car as security in case they cannot repay the loan in the future, and also unsecured consumer lending, where no asset is offered as protection.

The proposal to regulate consumer lending is in line with other jurisdictions. For example, in the United Kingdom (UK) the Financial Conduct Authority (FCA) has had responsibility for the regulation of consumer credit since April 2014, and it was previously regulated by the (now defunct) Office of Fair Trading. As a result of being brought in to FCA regulation, UK consumer credit firms must adhere to the standards and Principles for Businesses of the FCA. The UK regime regulates credit agreements made with individuals, sole traders, partnerships and

other unincorporated entities, but does not generally apply to credit agreements with bodies corporate (including partnerships each member of which is a body corporate).

It is proposed that legislative changes be brought forward requiring those engaged in lending and also business ancillary to lending involving retail clients (on a secured or unsecured basis) to be authorised and regulated by the JFSC, and to apply standards and behaviours that are consistent with other leading jurisdictions.

The proposals set out herein could be achieved by creating a new consumer lending law, adding to existing consumer protection laws, or by adding consumer lending as a class of financial service business within Article 2 of the Financial Services (Jersey) Law 1998 (FSJL). The purpose of this Consultation Paper, however, is to seek views on the scope of the proposed changes, i.e., “who” and “what” should be regulated, rather than “how” such regulation should be achieved. Potential methods of implementation are discussed solely to illustrate the effects that regulation may have.

SUMMARY OF RESPONSES

There was consensus around many of the proposals but on some topics, there was a divergence of views. This document summarises responses to each section of the Consultation Paper.

Sections and questions are described as per the original consultation which should be read alongside this document. Some respondents did not comment on all the questions in the Consultation Paper and accordingly unless otherwise indicated the words all respondents or half the respondents or similar should be read to mean all those that responded on the point.

Scope of activities (Question 1)

- a) Do you agree with using the definition of relevant credit business from the Ombudsman Law to define the scope of activities caught for the purposes of regulating consumer lending?
- b) Would you propose any changes to the above definition before it is used to define the scope of activities caught for the purposes of regulating consumer lending?

Most respondents were of the view that the definition of relevant credit business from the Financial Services Ombudsman (Jersey) Law 2014 should be used to define the scope of activities caught for the purposes of regulating consumer lending.

One respondent noted the need for exemptions from the proposed regulation of consumer lending be drafted simply and clearly to scope only Jersey takers of consumer finance. They voiced particular concern for international and sophisticated transactions being brought into scope.

There was a divergence of opinion of whether changes should be made to the definition of relevant credit business from the Financial Services Ombudsman (Jersey) Law 2014 before it is used to define the scope of activities caught for the purposes of regulating consumer

lending. Several respondents voiced concern over the above definition including large business lending in the scope of a new consumer lending regulatory regime.

Half of respondents made suggestions as to amendments that could be made to the above definition. Suggestions included the following:

- Set definition by the size of loan and be as wide as possible in all other respects
- Matching definition to that of UK and Guernsey where activities of a credit broker include “assisting an individual by undertaking preparatory work”
- Clarification as to whether secondary ‘credit brokering’ is a relevant credit business
- Clarification as to whether peer-to-peer lending is a relevant credit business

However, the other half of respondents stated it was not necessary to amend the above definition.

Scope of customers (Question 2)

- a) Do you consider that regulation of consumer lending should include individuals, sole traders, partnerships, and other unincorporated bodies?
- b) Do you consider that the regulation of consumer lending should extend to small business loans including to incorporated businesses? If yes, how would you define the extent of a small business loan: by reference to the size of the loan, the size of the business, etc.?

Most respondents agreed the proposed regulation of consumer lending should include individuals, sole traders, partnerships, and other unincorporated bodies. It was considered necessary given the fact that the UK broadly regulates in this way through the Financial Conduct Authority (FCA).

Conversely, some respondents, while happy to structure regulation around the above groups, wanted certain exemptions. A select number of respondents felt that lending arrangements to certain groups such as High Net Worth Individuals (HNW's) and partnerships with more than three partners should be outside the scope of regulation of consumer lending. This is because said respondents consider these groups to function more like a business than an individual.

Similar provisions by the FCA exist whereby lending to partnerships is only regulated where there are three or less partners as part of the partnership. It was imperative to a select number of respondents that proposed regulation does not include lending arrangements outside the scope of the FCA, so that barriers to business are not erected between Jersey and the UK.

There was a divergence of opinion whether the regulation of consumer lending should extend to small business loans including to incorporated businesses. While most agreed that small business loans should be in scope of new regulation, many disagreed that incorporated businesses should – considering them to act with a level of sophistication more akin to a business than a consumer.

Many respondents expressed their opinion that business loan of £25,000+ should be exempt from new regulation, this mirrors the UK regime. Consistency with the UK, Guernsey, and Isle

of Man (IOM) was of frequent concern of respondents, who cited the need for ease of business with these jurisdictions.

Scope of lenders (Question 3)

- a) Do you agree that the “by way of business” test should be used to define the point at which lending activity is brought into the scope of regulation?
- b) Do you consider that lending by individuals on a commercial basis should be within the scope of regulation? If so, is the “by way of business” test an appropriate threshold?

All respondents agreed that the “by way of business” test should be used to define the point at which lending activity is brought into the scope of regulation. On reflection, it was felt it was inappropriate for potential legislation to require individuals, but also other persons, to be regulated before lending money on a non-commercial basis. The use of an already tried and accepted test was received very well by respondents.

However, one respondent, while agreeing with 3(a), suggested that tackling the private lending market was critical to the success of the “by way of business” test. A private lender who lends through a firm is not conducting business as they are relying on a firm registered under Schedule 2 to conduct the business. Private lenders who lend direct avoid the anti-money laundering framework provided by Schedule 2 and should be discouraged.

There was universal support for lending by individuals on a commercial basis to be within the scope of regulation, with the “by way of business” test an appropriate threshold.

Many respondents voiced their opinion as to what other activities they did/did not want to be in scope of new regulation. Frequently mentioned was parent-child lending, with all who mentioned wishing it to be out of scope of new regulation. Other respondents worried HNWLending may be included, while there was confusion as to whether international and domestic lenders would be treated the same. One respondent mentioned they thought only lending that incurs interest and/or involves a lawyer should be covered by new regulation. Whereas another proposed following the regulated lending scorecard (or similar tool) to determine if a lending business be regulated or not.

Jurisdictional scope (Question 4)

- a) Do you agree that “carried on in or from within Jersey” is the correct test for the location of the consumer lending activity?
- b) In your view, should certain territorial exemptions be applied, for example where a lender is incorporated in the UK and carrying on lending in or from within Jersey but to regulated UK consumer credit standards?

Nearly all respondents agreed that “carried on in or from within Jersey” is the correct test for the location of the consumer lending activity. This is because respondents recognised the need to protect vulnerable takers of consumer finance and to employ a test based on where lending activity takes place.

The broader comment made was that the “carried on in or from within Jersey” test is an appropriate place to base legislation, however said legislation should be more specific and transparent with how it deals with several problem cases. These include firms carrying on

lending from within Jersey to other regulatory jurisdictions may be caught by the regulations for that jurisdiction and similarly for firms from other jurisdictions lending into Jersey.

Despite this, one respondent expressed such a test to be inappropriate, claiming all lenders should be required to meet Jersey standards. Whereas other respondents were troubled that online services and business loans may fall out of scope of new regulation if the test was used.

In respect of question 4(b), respondents were split on their opinion, with the slight majority agreeing in principle that certain territorial exemptions be applied. Despite broad agreement in principle, the way in which, and what, territorial exemptions be applied was debated among respondents.

Several respondents with an interest in international lending sought territorial exemptions applied where a lender is incorporated in a jurisdiction with an adequate consumer lending regime – perhaps applied according to an “equivalence test” (several respondents mentioned using this kind of framework). The need for exemptions for the UK, EU and Guernsey were of upmost concern to those respondents that agreed with need for territorial exemptions. They cited the need for reduced barriers for doing business with jurisdictions of interest, with regulation potentially acting a drag on business and therefore the economy.

Jersey-based lenders that disagreed with territorial exemptions felt that all lenders should meet Jersey standards no matter where they are based. Others voiced the opinion that all lenders operating in Jersey should have a registered company and premises to pay tax and be taxed like domestic services. Another suggested that UK standards were lower than that being proposed in Jersey so is not appropriate to give the UK exemption.

Exemptions (Question 5)

- a) Do you consider that business loans exceeding £25,000 should be exempt?
- b) Do you consider that loans secured over investment portfolios should be exempt?
- c) Do you consider that other secured loans should be exempt?
- d) Should buy-to-let agreements be exempt?
- e) Are there any other exemptions which, in your view, are important and/or relevant for inclusion in the Jersey regime?

Most respondents argued business loans exceeding £25,000 should be exempt from new lending regulation. They argued that this would bring consistency with the UK regime, promoting business opportunities between the two jurisdictions. It was suggested that the £25,000 limit be applicable to aggregate borrowing rather than the amount lent. Another respondent suggested that individuals and unincorporated business not be subject to this exemption, despite them agreeing with said exemption for incorporated businesses.

Those respondents who disagree with the argument above do not want any business loans to be in the scope of new regulation.

With respect to question 5(b), nearly all respondents agree that loans secured over investment portfolios be exempt. One respondent wished loans by investment firms or credit institutions to carry out a transaction relating to financial instruments also be exempt.

The respondent who disagreed with the proposal in 5(b) argued that the exemption should not be applied if it is for individuals or unincorporated businesses. Their lending is much like that of a consumer and therefore needs to be protected, such is the aim of regulation.

For question 5(c) there was concern and debate over what other secured loans should be exempt from new lending regulation. One respondent suggested a limit of £250k for secured loans in scope of regulation, whereas another sought loans secured on land the credit is used to purchase the land or to improve the land (or to refinance debt in one of these circumstances) be exempt. Others proposed carving out Guernsey-specific agreements and only exempting secured lending to limited companies.

Those respondents who explicitly disagreed with 5(c) did so because they felt that no exemption should apply if a loan is secured on a personal property, or to individuals or unincorporated businesses.

With respect to question 5(d) respondents were split on whether buy-to-let agreements should be exempt from lending regulation. A slight majority agreed buy-to-let to be exempt, citing the need for consistency with the UK regime where buy-to-let agreements are exempt from lending regulation. Those who disagreed felt that consumers entering buy-to-let as a personal investment need protection.

For question 5(e) some respondents proposed other exemptions to new regulation. These include lending to HNW's (mentioned several times), certain transactions involving small numbers of payments (e.g., insurance premiums), all types of loans over a monetary threshold and those included in a proposed Guernsey carve-out agreement.

Effects of regulating consumer lending (Question 6)

- a) Do you agree that consumer lending should be supervised by the JFSC? If not, which other authority should supervise consumer lending?
- b) Do you agree that the costs of authorising and supervising consumer credit activity should be levied through regulatory fees paid by those brought into the scope of regulation?

All respondents agreed that consumer lending be supervised by the JFSC, citing its proven track-record, and understanding within industry. Some respondents, however, voiced concerns of increased staffing pressures on the JFSC with the aforementioned new remit.

With respect to question 6(b), all respondents agreed that the costs of authorising and supervising consumer credit activity should be levied through regulatory fees paid by those brought into the scope of regulation. This is in despite of worry about impacts on lending costs increasing for consumers.

While in agreement in principle with question 6(b), some respondents made proposals of how to better levy the cost of new regulation. One respondent wanted levies proportionate to the types of lenders regulated and the risks imposed by them on the jurisdiction – i.e., low fees and low regulation for low-risk lending such as secondary lending. This, however, would undoubtedly add complexity to the levy scheme, a point noted by other respondents. Another suggestion was considering implementing the FCA scheme – where one would collect annual

fees inclusive of fees and levies on behalf of other regulatory bodies such as the Financial Services Compensation Scheme and Financial Ombudsman Scheme. The aim of this is to both align the new regulatory regime with that of the UK but decrease complexity for levy regimes across the Jersey financial services industry.

Unenforceability of terms (Question 7)

- a) Do you agree that consumer lending agreements should be rendered unenforceable by the lender where they are entered into in contravention of the requirement to be regulated?

Most respondents agreed that consumer lending agreements should be rendered unenforceable by the lender where they are entered into in contravention of the requirement to be regulated.

Despite this, respondents raised technical concerns. One such concern was of loans outside the scope of new regulation made by lenders whose other loans in scope of regulation contravened the requirements. It was of paramount importance to the respondent that these lending agreements for loans outside scope of regulation remain enforceable no matter the lender's other dealings and malpractice. The respondent further explained that they wished for the lender's claim for principal amount of the loan to be upheld no matter if they contravened requirements, only anything else in the lending agreement to remain unenforceable. The need for more clarity on exactly what is enforceable and what is not is necessary to keep the industry competitive.

One respondent who disagreed with 7(a) voiced concern of the consequences of making said lending agreements unenforceable. Namely, as to the consequences when a broker has contravened requirements but not the lender. The FCA allows lenders to apply for a validation entitling the lender to enforce the agreement where fair to do so – the respondent suggests a similar regime is introduced by JFSC.

Transitional provisions (Question 8)

- a) In your view, should the law apply only to new loans made after the date it is introduced? Should it apply only to businesses creating new loans after the introduction of the law, or should it apply to businesses which wrote loans before the law is introduced?

Nearly all respondents agreed that the law should only apply for loans made after the induction date, citing concerns with retrospective legislation. Some respondents wanted to ensure loans written before enactment of the new law but not yet issued were subject to the new law. Others mentioned that it should be a requirement for all rates and terms of any loan be explained clearly by the lender plus a recommendation of getting legal assistance.

One individual agreed with question 8(a) but sought a transitional period for retrospective loans to be updated in-line with new regulation, given the loan was issued after the introduction of the Channel Islands Financial Ombudsman hearings in 2010. They believe all consumers should be protected, including those with retrospective loans.



Consultation: Consumer Credit Regime: Proposed Regulation Appendix 4

General comments

Several respondents, including many experienced individuals, offered their assistance to the Government of Jersey with the remainder of work on new consumer lending regulation.

Other respondents used this space to voice general worry about the effect of regulation on the price of lending and barriers to conducting business. While another once again expressed their wish for regulatory consistency between Guernsey and Jersey.

One respondent argued that regulation should be incorporated into the Financial Services (Jersey) Law 1998 so that those who they considered a threat to consumers, like payday lenders, were properly targeted by any new legislation.

It was mentioned that the voluntary code alone is not enough to protect consumers taking on credit, citing issues with debt in society to be a main driver of the need for new consumer lending regulation.

Another respondent urged the Government of Jersey to consider the FCA Handbook and in particular PERG 4.10B. They argue this is a framework that will better deal with consumer buy to let mortgages.

Regarding the UK regime, one respondent notes the MMR (Mortgage Market Review) introduced for UK based lenders. They suggest the MMR appropriately deals with mortgage lenders in Jersey, citing immediate changes in offshore lenders following MMR, and therefore doesn't need to be dealt with in new consumer lending regulation in Jersey. Instead, the respondent wants to focus on unsecured lending and peer to peer lending to target consumer protection under a new regulatory regime.

Conclusion

The Government has taken these viewpoints into consideration when drafting consumer lending legislation.

Government would like to take this opportunity to thank consultation respondents, the JFL and the JFSC for their invaluable input into this process both before and after the consultation.

Further details about the 2018 consultation can be found on www.gov.je/consultations.

Appendix 4

