



# Consultation Feedback: The Consumer Credit Regime Proposed Regulation



This paper reports on responses received to the consultation paper relating to the proposed regulation of consumer credit published by Government on 5 July 2023. This paper also sets out our feedback on those responses.

Further enquiries concerning this consultation, consultation feedback and the response paper may be directed to:

**Julie Keir**  
**Associate Director of Financial Services**  
Government of Jersey  
19-21 Broad Street  
St Helier  
Jersey  
JE2 3RR

Email: [economy@gov.je](mailto:economy@gov.je) (FAO: Julie Keir)

## Contents

<b>1. Executive Summary .....</b>	<b>6</b>
<b>1.1 Background .....</b>	<b>6</b>
<b>1.2 Engagement and Consultation .....</b>	<b>6</b>
<b>1.3 Who we heard from .....</b>	<b>7</b>
<b>1.4 High level Consultation Feedback .....</b>	<b>8</b>
<b>1.5 High-Level Summary of Government Responses .....</b>	<b>10</b>
<b>2. Detailed Consultation Feedback – The Survey Questions .....</b>	<b>12</b>
<b>2.1 General .....</b>	<b>12</b>
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 .....	12
Question 2: Do you agree that Consumer Credit Firms should be licenced by the JFSC? If not, please explain .....	14
Question 3: Please provide any comments you have on the core principles that will shape the regulation of Consumer Credit Firms .....	15
Question 4: Do you agree with the scope of the activities that the Government proposes are regulated? If not, please explain .....	15
<b>2.2 Definitions .....</b>	<b>17</b>
Question 5: Please provide any comments you have on the definition of “consumer”. .....	17
Question 6: Please provide any comments you have on the definition of “micro-enterprise”. ...	19
Question 7: Do you agree the monetary denomination in the definition of “micro-enterprise” should be expressed in Pounds Sterling as opposed to Euros? If not, please explain. ....	20
Question 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 .....	22
Question 10: Do you agree with the definition of “consumer credit business”? If not, please explain .....	23
Question 11: Please provide any comments you have on the proposed definitions for “consumer credit agreement” or “consumer hire agreement” .....	24
Question 12: Please provide any comments you have on the proposed definition of “secured lending arrangement”. .....	25
<b>2.3 Activities .....</b>	<b>27</b>
Question 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. ....	27
Question 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. ....	28
Question 15: Please provide any comments you have on the inclusion of Buy-Now-Pay-Later (“BNPL”) agreements in the regime .....	29
Question 16: Do you agree with the proposals that bring “advising” within scope of the proposed regime? If not, why not? .....	30

Question 17: Please provide any comments you have on the proposals relating to “administering” and bringing the activity within scope of the proposed regime. ....	32
Question 18: Please provide any comments you have relating to the proposals to bring “arranging” into scope of the Financial Services Law. ....	33
Question 19: Please provide any comments you have on the proposals relating to “credit broking”. ....	34
Question 20: Please provide any comments you have on the proposals bringing “debt adjusting”, “debt counselling”, “debt collecting” or “debt administration” into scope. ....	35
<b>2.4 Private Lenders</b> .....	<b>36</b>
Question 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. ....	36
Question 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. ....	37
Question 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. ....	38
Question 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 period is required to enable individual private lenders to comply with their obligations under the draft Law? Please explain your answer. ....	40
<b>2.5 Exemptions</b> .....	<b>41</b>
Question 25: Do you agree with the proposed exemptions to the proposed regime? If not, please explain. ....	41
Question 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. ....	42
Question 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? ....	44
Question 28: Bearing in mind the JFSC will consult later, please provide any comments you have on the proposed further exemptions. ....	45
<b>2.6 Overseas Lenders and Agents</b> .....	<b>46</b>
Question 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. ....	46
<b>2.7 Secondary Legislation</b> .....	<b>48</b>
Question 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. ....	48
Question 31: Bearing in mind the JFSC will consult on these in detail later, please provide any comments you have on the proposed contractual requirements. ....	49
Question 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, included in a regulated agreement or arrangement, may be unenforceable and/or mean interest cannot be charged on a regulated agreement or arrangement. ....	51
<b>2.8 Remedies &amp; Breaches</b> .....	<b>52</b>

Question 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 .....	52
Question 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. ....	53
Question 35: Please provide any comments you have on the proposed further exemptions with respect to dégrèvement, including with regard to participation in the hearing where the new discretion may be exercised.....	54
Question 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.....	55
<b>2.9 Timeline</b> .....	<b>56</b>
Question 37: Please provide any comments you have on the indicative timeline. ....	56
<b>2.10 Overall proposals</b> .....	<b>57</b>
Question 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. .	57
<b>3 Consumer Feedback</b> .....	<b>58</b>
<b>3.1 Scope</b> .....	<b>58</b>
Consumer Question 1: Do you agree with the scope of activities proposed to be regulated? ....	58
<b>3.2 Exemptions</b> .....	<b>58</b>
Consumer Question 2: Do you agree with the proposed exemptions to the legislation? .....	58
<b>3.3 Micro-enterprises</b> .....	<b>59</b>
Consumer Question 3: Do you agree that the consumer credit protections should apply to loans to micro-enterprises up to £30,000, and that loans to micro-enterprises above that figure should be regarded as business loans?.....	59
<b>4 Feedback from Drop-In Sessions</b> .....	<b>60</b>
<b>5 Next Steps</b> .....	<b>61</b>
<b>6 Appendix: List of identifiable respondents</b> .....	<b>63</b>

## Executive Summary

### 1.1 Background

1. On 5 July 2023, the Government of Jersey ("**Government**") published a consultation on proposals to regulate the consumer credit industry ("**Industry**") ("**Consultation Paper**").
2. The Government, engaging with key stakeholders such as the Jersey Financial Services Commission ("**JFSC**") and representatives from multiple arm's length organisations and Industry representatives, developed and consulted on proposals to regulate the provision of consumer credit in Jersey.
3. The Consultation Paper was provided together with a draft of the draft Financial Services (Amendment No.5) (Jersey) Law 202- ("**draft Law**") which would amend the Financial Services (Jersey) Law 1998 ("**Financial Services Law**"). The draft Law set the scope of the new regulatory framework and provided some additional powers to impose substantive requirements on the providers of credit and business ancillary to credit. It was proposed that providers of consumer credit would be regulated by the JFSC and in most cases required to obtain and maintain a licence, comply with relevant corporate governance requirements and principles that will be set out by the JFSC in codes of practice.
4. The focus of the consultation was the draft Law, but the Consultation Paper also provided an outline of other existing and new legislation that will apply to the regulation of consumer credit. In particular, the Consultation Paper explored the potential secondary legislation that may be made under existing powers in the Financial Services Law together with the use of new powers specific to consumer credit that will be introduced by the draft Law.
5. The Consultation Paper sought views from a wide range of stakeholders on the proposed regulatory framework. The Consultation Paper noted that further consultation will be conducted by the JFSC later regarding the secondary legislation, codes of practice and other regulatory matters including fees.
6. The purpose of this paper is to feedback the responses received to the Consultation Paper and outline any changes to be made to the proposed regime because of the responses received.

### 1.2 Engagement and Consultation

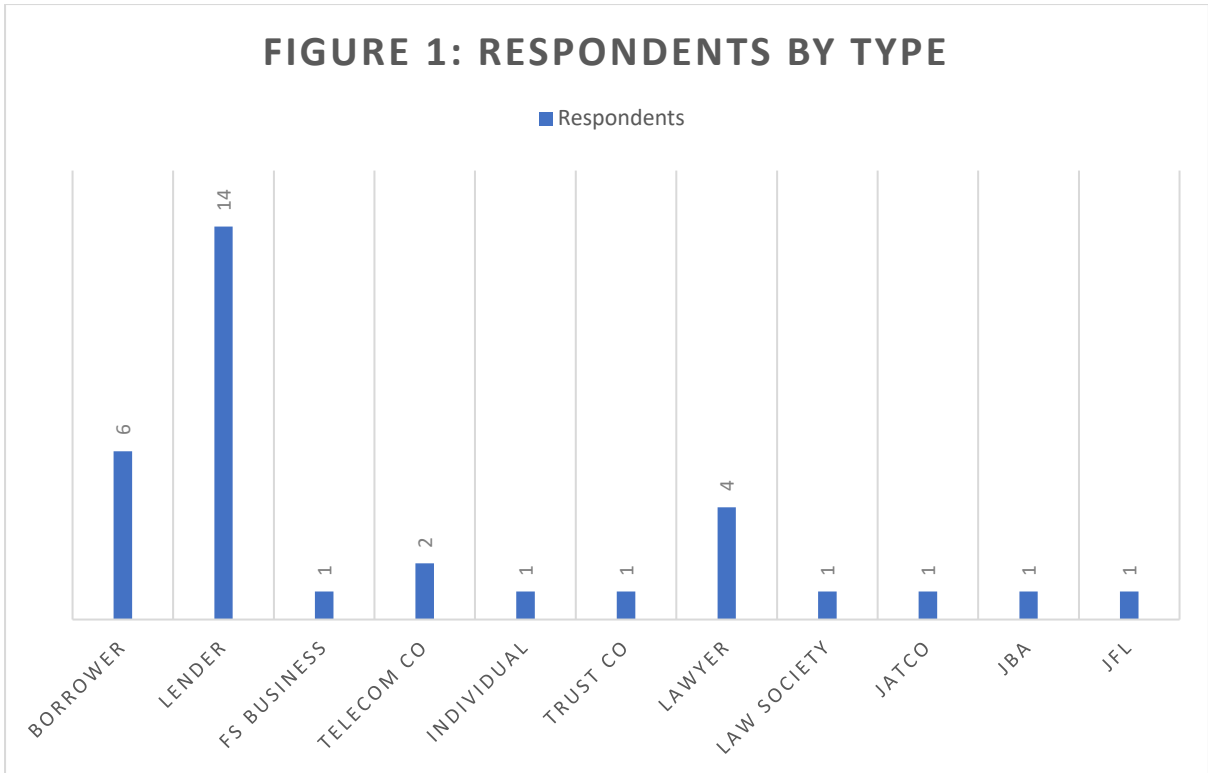
7. The consultation period ran from 5 July 2023 to 15 September 2023 ("**Consultation Period**").
8. In addition to publication of the Consultation Paper on the Government's website, the Government directly distributed the Consultation Paper to numerous associations and organisations. The list of those associations and organisations who were provided with the Consultation Paper was published on the Government's website in July. Further promotion of the Consultation Paper was carried out on social media channels and local radio, and an extensive outreach and engagement piece was performed throughout July, August and September until the end of the Consultation Period.
9. Outreach included presentations to the Jersey Bankers Association ("**JBA**"), the Jersey Association of Trust Companies ("**JATCo**"), the Association of Restructuring and Insolvency Experts ("**ARIES**") and presentations to individual businesses within Industry. Additionally, outreach included three

town hall events and five drop-in sessions at the Town Library, and an engagement session at a town café for Jersey’s Portuguese community. We also spoke with individuals and businesses on a 1:1 basis where those wishing to engage were unable to attend the pre-arranged engagement sessions.

10. The three town hall events were held in July at the beginning of the Consultation Period: one event was held for borrowers/consumers, one event for businesses and one event for private lenders. The session that was run for businesses was well attended with approximately 25 to 30 attendees present. Two attended the private lenders session and no-one attended the session for borrowers/consumers.
11. The Government held drop-in sessions at the Town Library which provided an opportunity for one-to-one discussion. Five drop-in sessions were held between July and August. A total of eight attended the drop-in sessions. Some of those who attended the drop-in sessions went on to submit a formal online response.

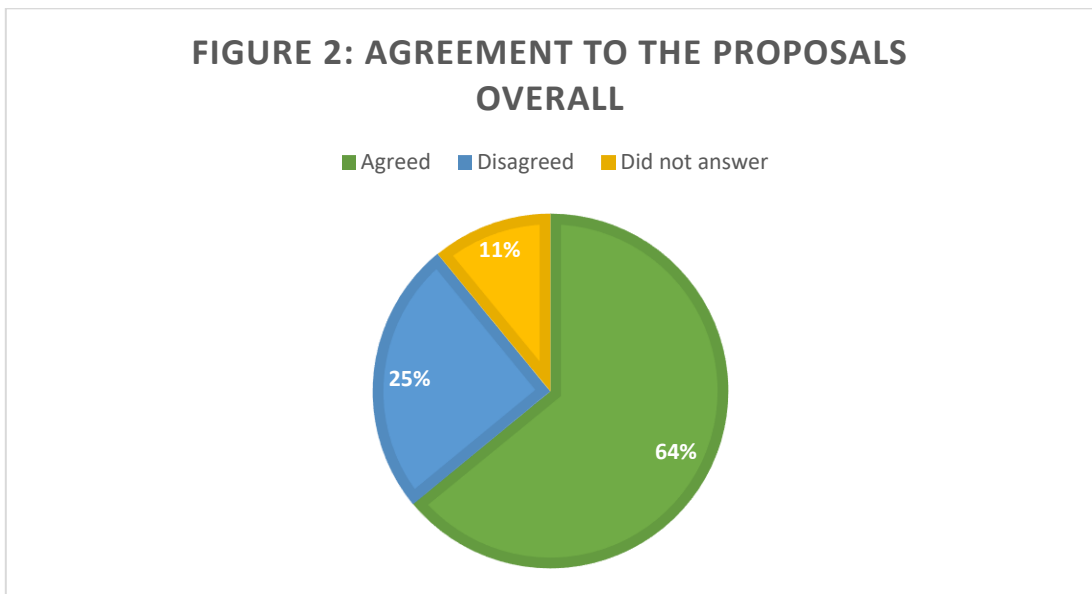
### 1.3 Who we heard from

12. In total, the Government received 33 formal responses to the Consultation Paper (Figure 1). Responses were received from a range of stakeholders, including but not limited to, borrowers, lenders (both bank and non-bank), financial services businesses, trust companies, telecommunication (“**Telecoms**”) companies, the JBA, JATCo, the Law Society of Jersey and Jersey Finance Limited (“**JFL**”). JFL accumulated feedback anonymously from several respondents who had provided JFL with their comments on the proposals together with JFL’s own response. Full details of those who responded formally to the Consultation Paper are set out in the Appendix at the end of this document.
13. The seven borrowers who responded (17%) were asked a series of shorter consumer focused questions. The remaining 26 respondents (83%) were asked more detailed questions from the perspective of a business that might become regulated under the proposals, or a user of the Financial Services Law, e.g., lawyers. All respondents were able to submit responses anonymously if they wished to do so.
14. The individual referred to in Figure 1 submitted their response as neither a lender nor a borrower, but as an experienced member of the financial services community with some knowledge of the consumer credit market.
15. After the consultation period, initial feedback from the consultation was presented to Industry representatives in November 2023 with a more detailed breakdown of feedback being provided in December 2023. A series of workshops were held in January 2024 to explore some of the themes raised in the consultation feedback, to ensure that the issues were fully understood and properly considered in the development of the draft Law.



#### 1.4 High level Consultation Feedback

- 16. A total of 38 questions were asked of businesses and those using the Financial Services Law in the Consultation Paper.
- 17. Of those who responded to the consultation formally, the majority (64%) overall agreed with the consultation proposals (**Figure 2**). A quarter (25%) of respondents disagreed, and some chose not to answer the question (11%).





18. Those that disagreed with the proposals did so primarily on the basis they disagreed with the wide definition of “consumer”. We heard that all types of respondents were concerned that the definition of “consumer” was too wide. Concerns were raised both regarding the inclusion of High-Net-Worth Individuals (“**HNWIs**”) and any corporate entity of less than ten full time equivalent employees (“**FTEs**”) and with a turnover of less than £/€2 million per annum (a “**micro-enterprise**”). The concern was that the inclusion of micro-enterprises and HNWIs within the scope of all aspects of the new regime would add unnecessary costs and complexity to the conduct of many lending transactions that should be viewed as commercial rather than consumer lending.
19. There were concerns that additional, complex exemptions would be required to mitigate the unintended consequences of capturing non-consumer focussed lending because of the wide definition. The additional exemptions that might be required would include, but might not be limited to, exemptions for intra-group lending and shareholder lending.
20. In any event, respondents thought that the proposed exemptions to the regime should be supplemented by additional exemptions for Lombard lending<sup>1</sup> and for lending by private lenders. It was also suggested that exemptions should be extended for the activities of advising and arranging to lawyers and regulated professionals, e.g., accountants, similarly to that provided for credit broking and other activities ancillary to debt.
21. In addition, some respondents commented that a few of the activities that are to be regulated under the proposals may be duplicative and that there could be an opportunity for streamlining these. For example, some felt that certain activities, such as “credit broking” and “arranging” could be combined.
22. Respondents thought that it was important that the effect of additional regulation should not be to reduce competition in the consumer credit market, particularly by creating barriers for lenders from the UK or Guernsey, including credit card providers, who are already regulated in that jurisdiction to a comparable level. As such, there was support for possible exemptions for overseas lenders where they have no presence in Jersey and do not directly solicit business in Jersey. Nevertheless, it was equally noted by local lenders that it was important that new regulations did not place a disproportionate burden on local lenders putting overseas lenders at a competitive advantage, ultimately reducing the local market offering.
23. All but one respondent who disagreed with the proposals set out in the Consultation Paper agreed in principle with the need for consumer credit protections. However, some respondents considered that the objectives of the draft Law should be delivered through an alternative mechanism, such as through amendments to the Consumer Protection (Unfair Practices) (Jersey) Law 2018 (“**Consumer Protections Law**”). There was also a perception among some respondents that the Financial Services (Ombudsman) (Jersey) Law 2014 (“**Ombudsman Law**”) might provide an alternative mechanism for implementation of the consumer protection.
24. It was suggested by some consultees that Telecoms companies, should be included in the essential services exemption, as although they provide consumers with credit, that credit is inextricably linked to the provision of data. The provision of data services to consumers is already regulated by the Jersey Competition and Regulatory Authority (“**JCRA**”).

---

<sup>1</sup> Lombard lending is a type of secured loan in which the borrower pledges liquid assets as collateral. Assets as collateral can include stocks, bonds, life insurance policies, or even money in bank accounts. The loan is granted by banks, often, but not exclusively, to HNWIs or other banks. Lombard lending can offer favourable credit terms, such as lower interest rates for borrowers.

25. Finally, we also heard that the suggested transitional period of six months was insufficient. Respondents suggested that 12 months would be more appropriate and more engagement work with stakeholders would be needed to ensure the regime is fully mapped out before implementation.

## 1.5 High-Level Summary of Government Responses

26. The Government has carefully considered the responses provided. As set out in more detail in subsequent sections of this response paper, the Government considers that a draft Law, which amends the Financial Services Law, remains the appropriate mechanism through which to introduce the supervision of consumer lending practice by the JFSC.

27. However, as set out in the Consultation Paper, it is recognised that supervision by the JFSC should not be the only means through which consumer credit is regulated. Having regard to the consultation feedback, it is recognised that in a limited number of cases full supervision by the JFSC may not be proportionate, and other methods might be relied on to protect consumers. As such, it is appropriate to recognise that complaints regarding relevant credit business are already eligible for referral to the Channel Islands Financial Services Ombudsman (“CIFO”), as established by the Ombudsman Law and it is anticipated that CIFO should be able to accept complaints from consumers in respect of compliance with the regime established under the draft Law. Further, the draft Law will contain a power to make further specific provisions by Regulations with respect to unfair terms in consumer credit agreements and secured lending arrangements and debt collection. These protections could potentially apply even where JFSC supervision does not.

28. In view of the feedback on the proposals, an amendment will be made to the draft Law to tighten the definition of “consumer” by removing the “micro-enterprise” limb (limb (b)) from the definition so that the regime will only apply to individual consumers who (if they have one) are acting wholly or mainly outside of their trade, business and profession.

29. The activities that constitute “consumer credit business” will be streamlined to remove any duplication. The regulation of debt collection will be legislated for by way of secondary legislation with the intention that this activity will not be supervised by the JFSC.

30. Further, although all the details may not be set out in the draft Law, the Government intends to make provision in secondary legislation to enable HNWI customers to choose to opt out from some of the protections in the new regime.

31. A narrow exemption for Lombard lending will be provided by revising the draft Law.

32. There is already provision in the draft Law for an exemption from supervision for utility providers where they provide metering equipment on a hire purchase basis to consumers. The Government is persuaded that it is appropriate for telecoms companies to also be exempted for certain purposes relating to consumer hire agreements covering the supply of telecoms equipment. This is because consumers are already offered a degree of protection through their being regulated by the JCRA and there is no evidence of harm to consumers who make use of credit to purchase goods and services from Telecoms companies. It is anticipated that this will avoid the need for Telecoms companies to be licenced under the new regime, which might be disproportionately burdensome for these service providers and might adversely affect the provision of their services to islanders.

33. The Government recognises that private lenders play a valuable role in Jersey’s local economy, and it is not the Government’s intention to unnecessarily inhibit the ability for private lenders to

operate. The Government will work together with the JFSC and Industry to develop arrangements that will ensure that any new regulatory burdens are only placed on private lenders where that is necessary and in a proportionate manner considering the extent of their lending and the consumer protection objectives of this project.

34. The Government has considered the concerns of respondents that a six-month period would not be sufficient to implement the new regime once the details are settled. The Government's intention is now to lodge the draft Law towards the end of 2024 for debate with the States Assembly in early 2025 to provide a longer period in which to finalise the draft Law taking account of the feedback received during the consultation.
35. If the draft Law is passed by the Assembly, there will then be a further period during which secondary legislation, codes of practice and guidance supporting the new regime will be developed. Considering the feedback from the consultation, the Government intends that there should be a period of 12 months once the full details of the new regime are clear in which providers must register with the JFSC and prepare to implement the new regime. Therefore, the new regime will not come into force until at least 2026 and further details of the implementation timetable will be settled once the draft Law has been passed.
36. This extended timeline will enable Industry, the JFSC, Trading Standards and CIFO to prepare thoroughly for the coming into force of the new regime. It will also allow the Government to continue to work diligently with stakeholders to develop and consult on the proposed regime.
37. The Government will continue to work with the JFSC and other key stakeholders to establish working groups. A day of workshops has already taken place to develop the policy on the trustee exemption, a possible opt-out for HNIWs, and a lighter touch supervisory regime for private and overseas lenders. We will build on the progress made working closely with stakeholders throughout the remainder of 2024 to formulate and consult on primary and secondary legislation before the draft Law is enacted.
38. The Government will also continue to work closely with key stakeholders such as the Law Society and ARIES to ensure the appropriate changes are made to the dégrèvement regime to achieve the desired outcomes.

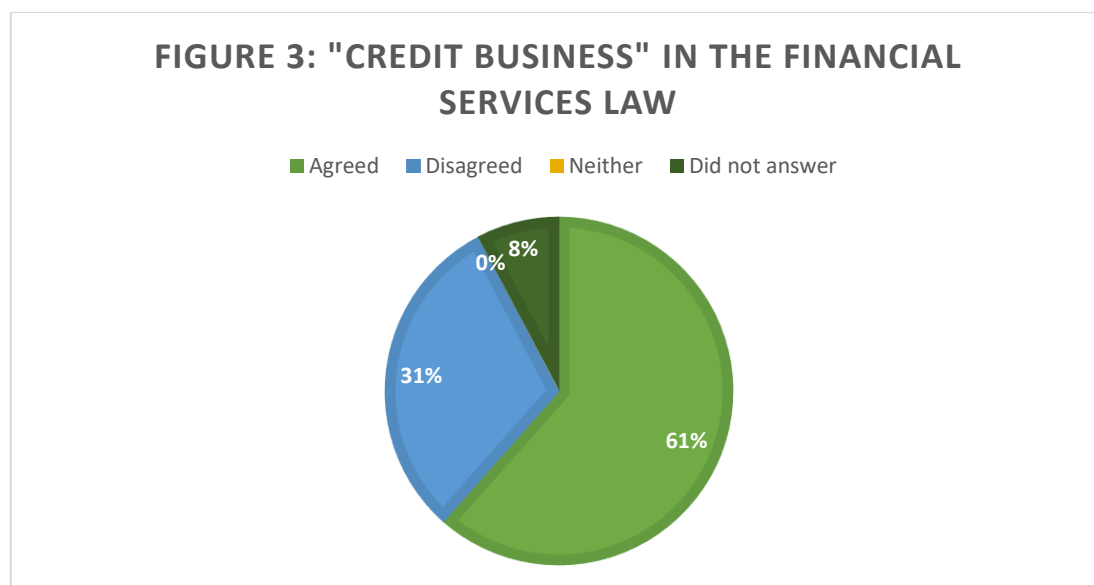
## 1. Detailed Consultation Feedback – The Survey Questions

39. The feedback of the 26 respondents who responded to the more detailed Industry focussed questions is considered in this section. The responses of the remaining seven respondents, who submitted responses to the borrower/consumer survey questions, are set out below in Section 3.
40. Under each of the detailed questions, we have set out Government’s response to the feedback received.

### 2.1 General

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.

41. Most respondents who responded to the question agreed with the proposal to incorporate “credit business” into the Financial Services Law as a new class of regulated business (see **Figure 3**).



42. Those in agreement felt that placement of “credit business” as a class of business in the Financial Services Law would bring consumer credit provisions in Jersey in line with those of other jurisdictions, including the UK, and that it was helpful to situate them in the same place as other financial service business regulation.
43. Those disagreeing, did so on the basis that whilst there was some overlap in principles behind the consumer credit regime, they felt that the Financial Services Law incorporates governance measures that are disproportionate to those participating in consumer credit activities, including Financial Action Task Force (“**FATF**”) requirements. Others suggested the Financial Service Law was originally introduced to provide a framework for international finance and is a complex piece of legislation. There was concern that adding a new class of business and the need for accompanying exemptions may make the Financial Services Law even more complex. Some felt a simpler means of achieving consumer credit regulation would be via the already existing Consumer Protection Law and/or the Ombudsman Law.

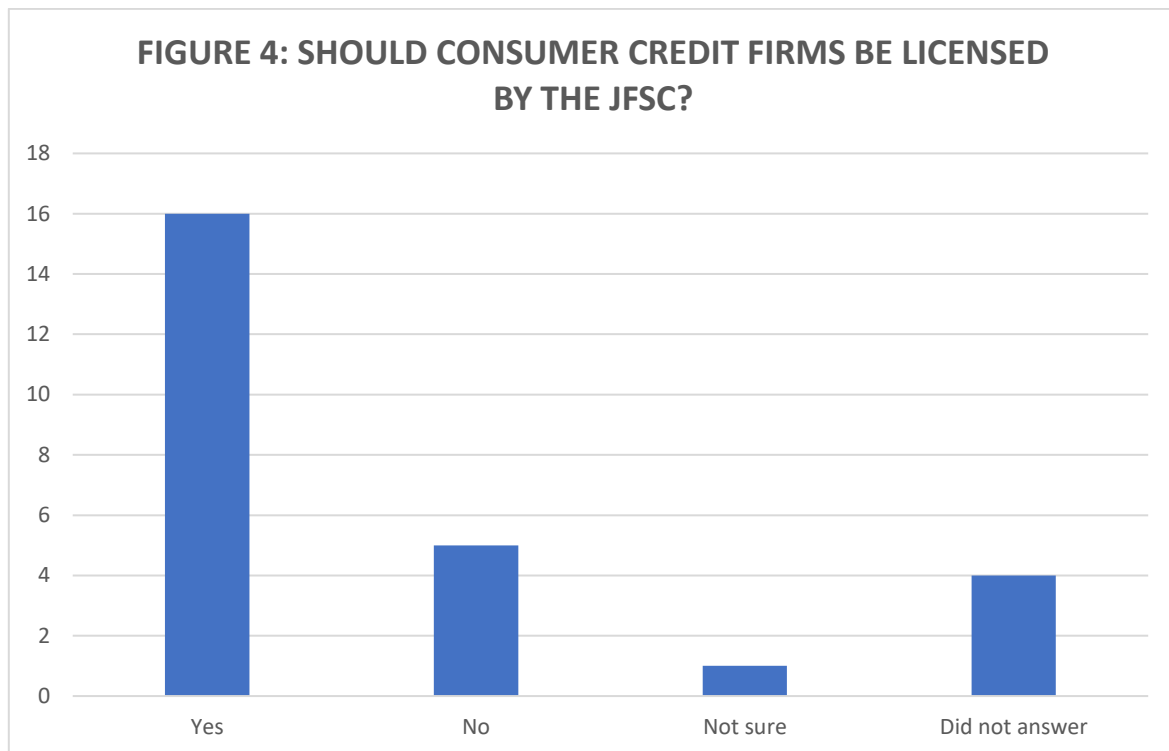
## OUR RESPONSE TO Q1

Having considered the points raised in the feedback in the round, the Government will be adding a new class of “consumer credit business” to the Financial Services Law. The Financial Services Law will remain the primary statutory vehicle for the new consumer credit regime.

The Government recognises that the Consumer Protection Law and Trading Standards have a role to play in protecting consumers from abuse, including in the context of consumer lending. However, the Consumer Protection Law protects consumers by imposing criminal offences and penalties (up to a £10k fine) for knowingly or recklessly engaging in the unfair commercial practices prohibited under that Law. It would not be proportionate, and would be out of step with neighbouring jurisdictions, if the Government elected, as an alternative to making the provision in the draft Law, to extend unfair commercial practices in the Consumer Protection Law to cover the types of regulatory requirements that should be applied to consumer lending. The JFSC has effective regulatory powers, including the potential to impose civil penalties, which are better suited for that purpose. Further, the Ombudsman Law already applies to relevant credit business so CIFO can, and should continue to, deal with complaints working alongside the supervision provided by the JFSC.

The Government recognises that in some limited instances, including in respect of some private lenders, supervision by the JFSC of the conduct of lending business may not be necessary to achieve the consumer protection objectives of the draft Law. The Government will aim to ensure that any exemptions from such supervision are cast to avoid creating unnecessary barriers to lending by overseas and private lenders, while ensuring that consumers will be protected against sharp practices through other means.

Question 2: Do you agree that Consumer Credit Firms should be licenced by the JFSC? If not, please explain.



44. Most respondents (62%) agreed that the JFSC should be the regulator of consumer credit firms (**Figure 4**). Of the 19% that disagreed, respondents primarily queried the preparedness of the JFSC to regulate consumer credit.
45. Although agreeing that consumer credit firms should be regulated by the JFSC, 100% of responding Telecoms companies felt they should not be regulated by the JFSC when they are already regulated by the JCRA under the Telecommunications (Jersey) Law 2002 for consumer protections in respect of billing and services.

#### OUR RESPONSE TO Q2

Having considered feedback received, the Government is proceeding with its proposal to require consumer credit firms to be licenced by the JFSC. However, because there is no evidence of harm to consumers who make use of credit to purchase goods and services from Telecoms companies, the Government is persuaded that it is appropriate for Telecoms companies to be exempted where they enter consumer hire agreements covering the supply of telecommunications equipment. The Government acknowledges consumers are already offered a degree of protection through those companies being regulated by the JCRA, and that it would be disproportionately burdensome for these service providers and potentially adversely affect the provision of services to islanders by regulating them further. That said, should evidence of harm to consumers come to light in the future, the Government reserves its position to amend legislation to bring Telecoms companies back into scope, though the Government would not do this without further consultation with Telecoms companies in advance.

Question 3: Please provide any comments you have on the core principles that will shape the regulation of Consumer Credit Firms.

46. All respondents agreed with the core principles of the proposed regime but cautioned that clear and fair guidance would be needed from the commencement of regulation rather than allowing it to develop overtime.

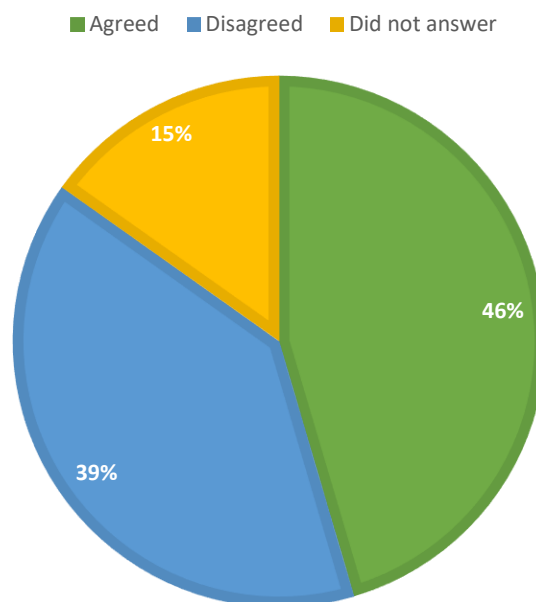
#### OUR RESPONSE TO Q3

We will promote alignment to Guernsey's regime where possible to enable interoperability for Consumer Credit Firms between the jurisdictions. We will work further with the JFSC and Industry to develop the regulatory framework in this regard.

The Government has also revisited the timetable to ensure there is much longer time available for delivery of the project and a 12-month implementation period once all the secondary legislation and codes of practice are in place.

Question 4: Do you agree with the scope of the activities that the Government proposes are regulated? If not, please explain.

**FIGURE 5: RESPONDENTS WHO AGREED WITH THE SCOPE OF ACTIVITIES**



47. Overall, there was support for the proposed scope of activities to be regulated (46%) (Figure 5). Given the number of UK products and services (including mortgages, credit cards and other loans) on offer to Jersey consumers, some respondents felt consistency between the UK regime and Jersey's regime was necessary.

48. However, the 39% of respondents who disagreed with the proposed scope of activities, believed that the scope should only be relevant to local retail individual consumers and should mirror those activities within scope in Guernsey. The dissenting respondents commented that, in view of the inclusion of micro-enterprises and HNWI customers within the protections provided, multiple exemptions would be required to ensure that non-consumer focussed international finance was not captured within the regulatory framework.

#### **OUR RESPONSE TO Q4**

A few respondents who agreed and disagreed with the proposed activities commented that further detail in the form of secondary legislation would be helpful to understand the full scope of activities to be regulated and that they may have further views in due course.

Noting the comments made in respect of the proposed scope of activities, Government will endeavour to align Jersey's consumer credit regime with Guernsey's regime wherever that is appropriate and will enable providers to deliver pan Island services efficiently.

The definition of "consumer" will be amended to remove limb (b), which would have covered any micro-enterprise that employs fewer than 10 persons and whose annual turnover or annual balance sheet total does not exceed either £/€2 million. This means the proposed draft Law will now simply benefit individual consumers (and if they have one) acting mainly or wholly outside of their trade, business or profession.

Although it is not the intention to include sole traders or customary law partnerships of two to three persons in scope at present, if evidence of harm being caused to small businesses (or "micro-enterprises" as defined in the Consultation Paper) becomes apparent, the Government may, in the future, review its position and (based on consultation feedback) consider extending the consumer protection to sole traders and customary law partnerships of two to three persons.

The Government is exploring the option of an "opt-out" for HNWIs. A HNWI opt-out is provided in Guernsey's regime and will be familiar to many businesses working in Jersey's market already (see response to Q5 below for more details). The activities to be regulated as "consumer credit business" will be streamlined to remove duplication (see response to Q16 below for more details).

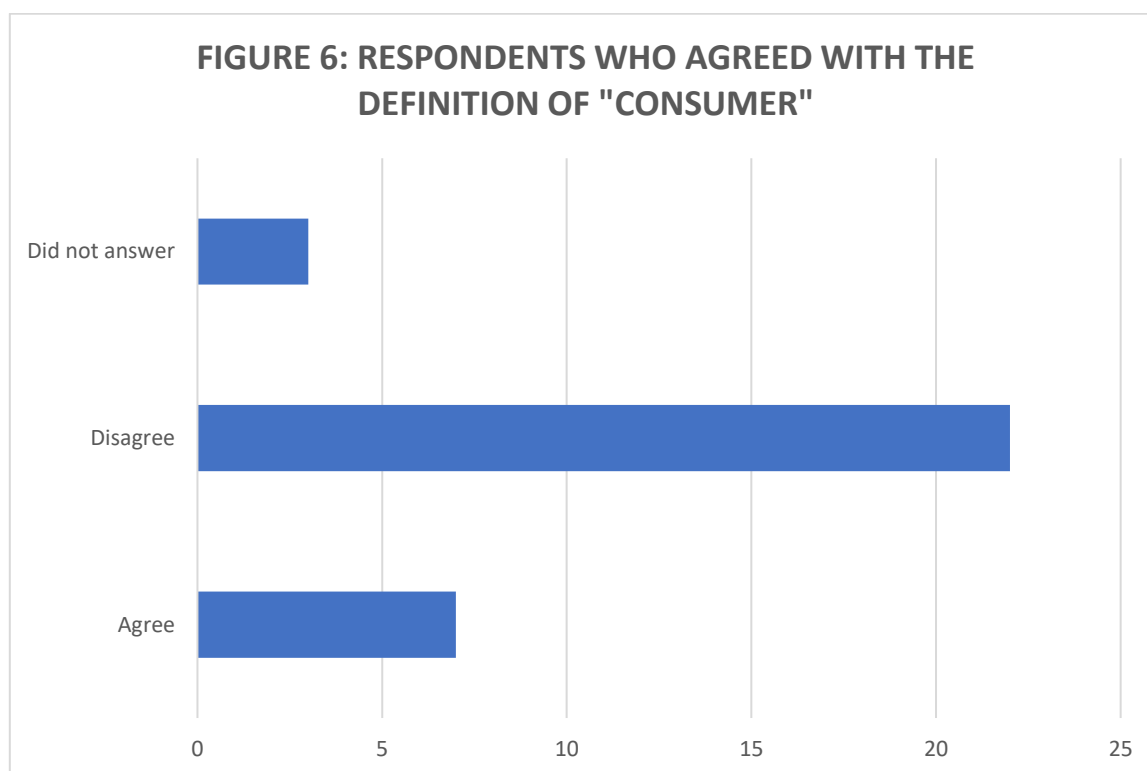
There will also be a narrow exemption included in the draft Law to exclude from scope Lombard lending (a form of lending using securities as collateral that is not typically used by retail consumers).

The Government recognises that private lenders play a valuable role in Jersey's local economy, and it is not the Government's intention to unnecessarily inhibit the ability for private lenders to operate. The Government will work together with the JFSC and Industry to develop arrangements that will exempt private lenders from full JFSC supervision, including the relevant corporate governance and financial stability requirements where the extent of their lending activities is limited and where protection for consumers can be delivered through other means, including restrictions on the inclusion of unfair terms in lending contracts. This will help to ensure that any new burdens placed on private lenders are limited to those which are necessary and proportionate considering the extent of their lending and the consumer protection objectives of this project. We will work further with the JFSC and Industry to achieve this. The Government's Response to Q21 to Q23 inclusive (below) provide more details on this.



## 2.2 Definitions

Question 5: Please provide any comments you have on the definition of “consumer”.



49. Only 23% of respondents agreed with the proposed definition of “consumer” (**Figure 6**). Of the seven respondents who agreed, six did so without specific reference to necessary exemptions in their comments. The remaining respondents agreed with the definition on the basis that their comments on exemptions at Question 26 were considered (i.e., that differences between the UK’s regime and that proposed in Jersey are highlighted, e.g., regulations only applying to consumer credit agreements up to a certain value and no HNWI exemptions).

50. An overwhelming percentage of respondents (73%) disagreed with the proposed definition of “consumer”. There were two distinct areas of concern:

- The definition brings into scope HNWIs.
- All corporate entities are included provided they have less than ten FTEs and an annual turnover of less than £/€2 million.

51. Respondents commented that HNWIs are frequently sophisticated borrowers who often do not want nor need consumer protections as they receive bespoke legal and tax advice on lending arrangements. Furthermore, respondents commented that as Guernsey and the UK’s regimes enable HNWIs to “opt-out” of the consumer credit protections, Jersey should ensure that its framework also provides for an “opt-out” for HNWIs to ensure parity of regimes and allow Jersey to remain a competitive jurisdiction for the private wealth sector.

52. Respondents expressed concern that all corporate entities would be considered “consumers” provided they met the employee and financial thresholds. Consequently, this would include the following lending, irrespective of whether there was a consumer/retail element or not:

- All intra-group lending
- Lending between groups that may have a connection but be legally separate
- Lending between different companies within different corporate structures
- Trust company business (“TCB”) administered lending to borrowers and/or beneficiaries

53. Respondents felt that by including this “non-consumer” type lending within scope it would have a detrimental impact on the international finance centre (“IFC”) economy. Respondents remarked it could create market uncertainty, would put Jersey out of step with other competing IFC jurisdictions, including the UK, Singapore, and Ireland, and may suggest that Jersey is not open for business. Respondents commented that to mitigate the impact of including non-consumer type lending, numerous and complex exemptions would be required.

54. It was also observed that the proposed definition of consumer does not align with Guernsey’s definition which could cause friction for those businesses that operate across the Channel Islands.

#### OUR RESPONSE TO Q5

As indicated at in the response to Q4 above, the definition of “consumer” in the primary law is to be amended to exclude any commercial lending. Limb (b) (the micro-enterprise limb) of the proposed definition will be removed entirely.

There is to be a narrow exemption in the primary law for Lombard lending to HNWI.

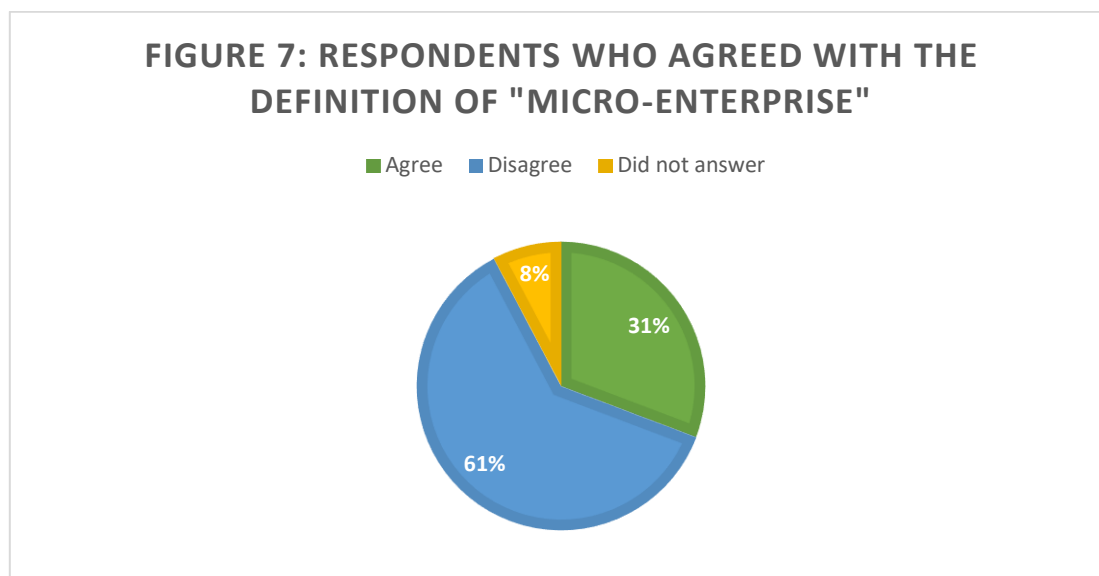
The Government is exploring the potential for an “opt-out” for HNWI to the remainder of the consumer credit regime that may be similar, in some respects, to the “opt-out” available in Guernsey, i.e., provided a HNWI agrees to be treated as a HNWI and wishes to be excluded from certain benefits of the consumer credit regime, the HNWI may choose to do so in writing provided that:

- i) In relation to a consumer credit or hire agreements the HNWI is an individual with a net income greater than £150,000 per annum, or net assets in excess of £300,000 and
- ii) In relation to secured lending arrangements, the HNWI is an individual with net income greater than £300,000 per annum, or net assets in excess of £3m.

In both cases above, assets must not include the individual’s primary residence, or any loan secured on it, or the benefits of a pension nor lump sum payable on retirement or the termination of services of the individual concerned.

The Government has already entered into dialogue with the JFSC and Industry through workshops and direct engagement with the Law Society and JATCo to develop these proposals. The Government will continue to work with those stakeholders to deliver consumer protections for HNWI as appropriate and further consultation will take place on the codes of practice that will set parameters for an “opt-out”.

Question 6: Please provide any comments you have on the definition of “micro-enterprise”.

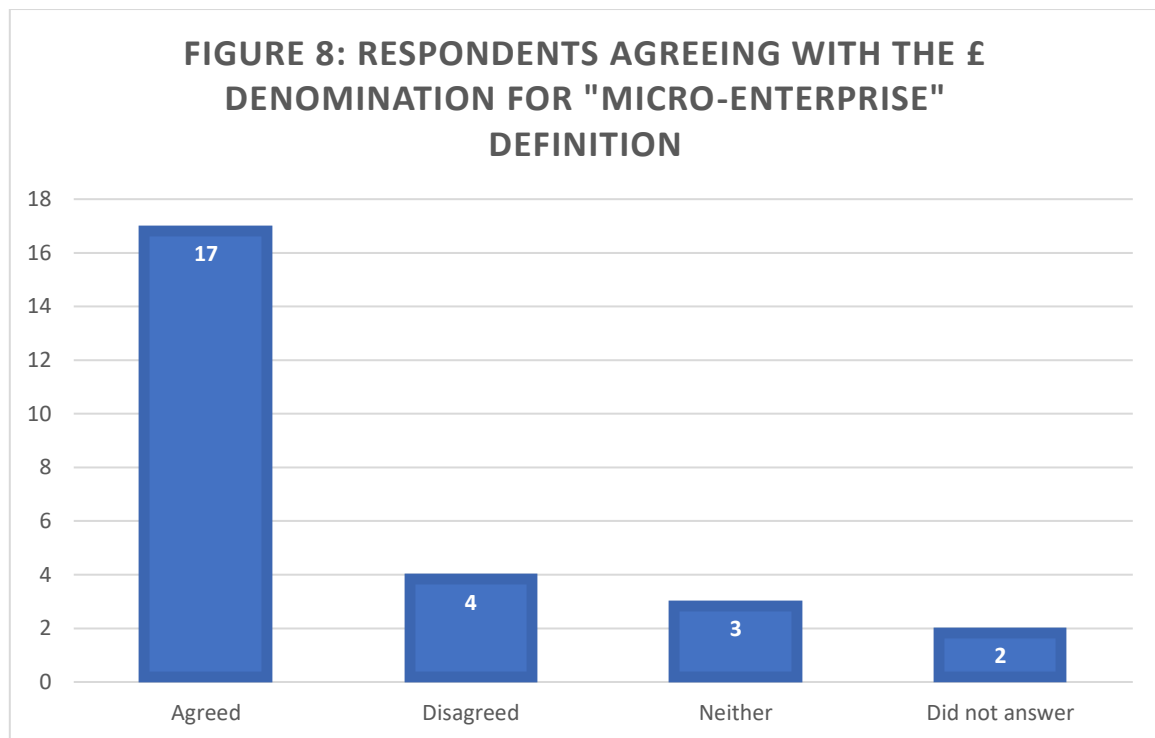


55. There was some support for the definition of “micro-enterprise” (**Figure 7**). However, more respondents disagreed (61%) than agreed (31%). Of those that disagreed with the definition, the vast majority did so for the reasons set out in the feedback to Question 5 above.
56. Some additional observations were made regarding the definition of “micro-enterprise” were that a corporate entity that has less than ten FTEs and an annual profit or turnover of less than £/€2m does not necessarily denote a “consumer” in Jersey and these characteristics are not accurate measures of risk.
57. Concerns were also raised that many sole traders and small businesses already find it difficult to obtain credit in Jersey and that by requiring consumer protections apply to them, may put credit further out of reach as some lenders stop lending altogether or the additional administrative costs are passed on to those borrowing.
58. That said, there was helpful commentary that if the policy intent remains to provide consumer protections to some small businesses, albeit at odds with Guernsey’s regime, then a very narrow and local definition should perhaps be used to capture sole traders and Jersey customary law partnerships of two-three partners (though exemptions may still be required to avoid unintended consequences of capturing non-consumer focussed small businesses).

#### OUR RESPONSE TO Q6

Commercial lending will be removed entirely from the primary law, which addresses the concerns regarding its inclusion. No further response is necessary.

Question 7: Do you agree the monetary denomination in the definition of “micro-enterprise” should be expressed in Pounds Sterling as opposed to Euros? If not, please explain.



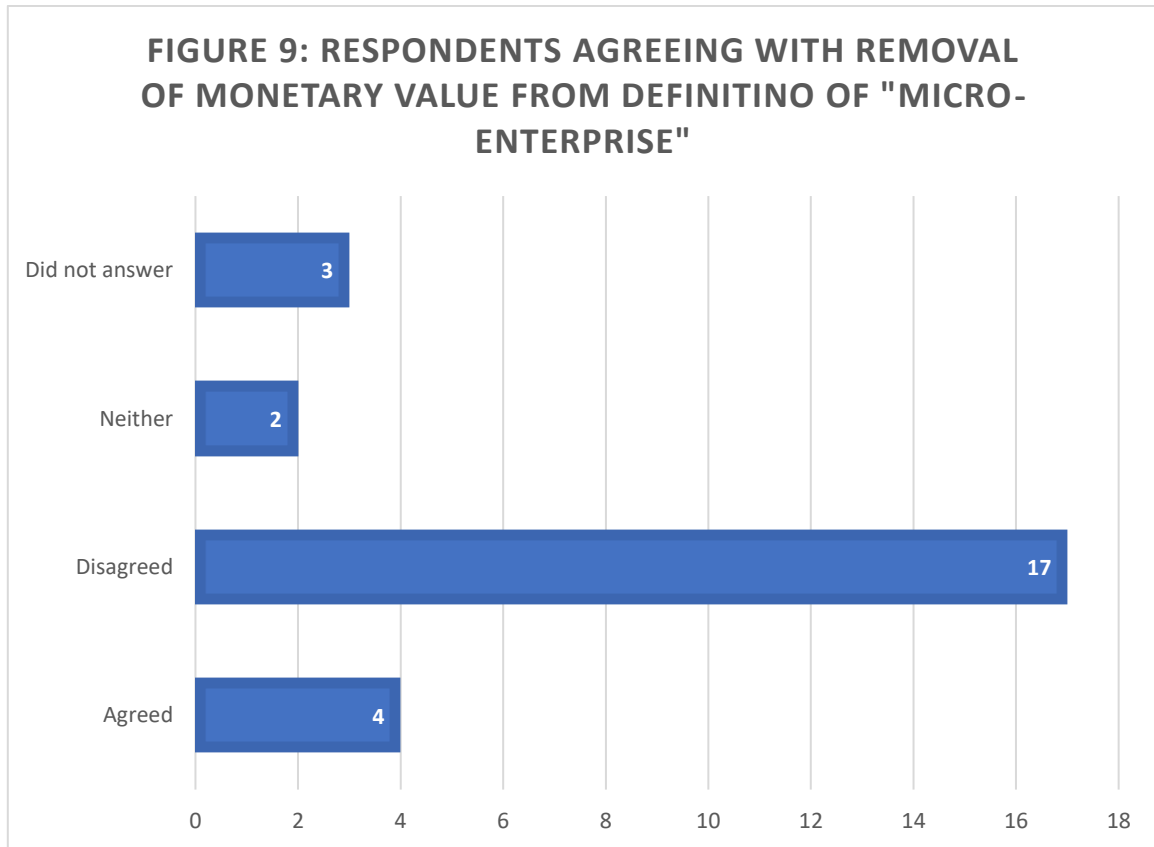
59. There was overwhelming support for the monetary denomination for the definition of “micro-enterprise” to be expressed in pounds sterling, assuming the inclusion of micro-enterprise survives and remains in the definition of consumer, as it aligns with Jersey’s local currency (**Figure 8**).

60. Respondents who disagreed (15%) remarked that micro-enterprise should not be included in the definition of consumer in any event, and if it is, the definition should match the UK’s Financial Conduct Authority definition which is expressed in Euros.

**OUR RESPONSE TO Q7**

Commercial lending will be removed entirely from the primary law; hence the concerns are no longer relevant/no further response is necessary.

Question 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 number of FTEs only? Please explain.

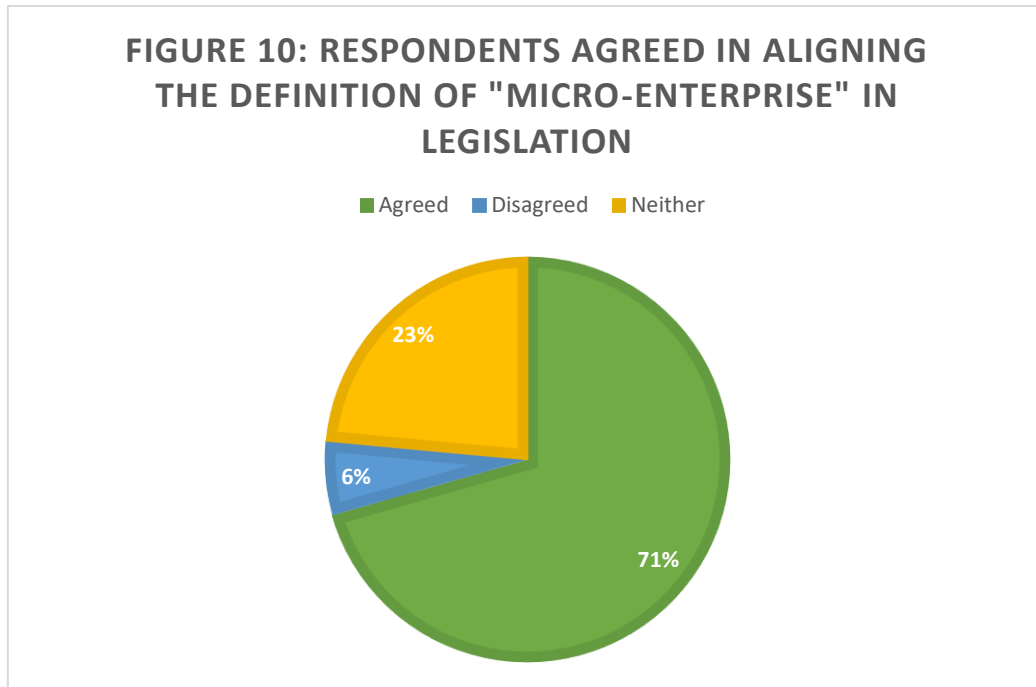


61. Assuming the definition of “micro-enterprise” remains within the definition of “consumer”, most respondents (65%) disagreed that micro-enterprises should be determined by reference to the number of FTEs only (**Figure 9**). In addition to the reasons set out in the feedback to Question 7 above, respondents commented that the definition should not be expressed by way of a single metric. Others commented that some micro-enterprises, as defined, may have a low balance sheet with substantial assets largely negated by large borrowing and should not be deemed “micro-enterprises”.
62. 15% of respondents agreed with the proposal to remove the reference to a monetary value from the definition of micro-enterprise but gave no rationale for doing so.

#### OUR RESPONSE TO Q8

Commercial lending will be removed entirely from the primary law; hence the concerns are no longer relevant/no further response is necessary.

Question 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.

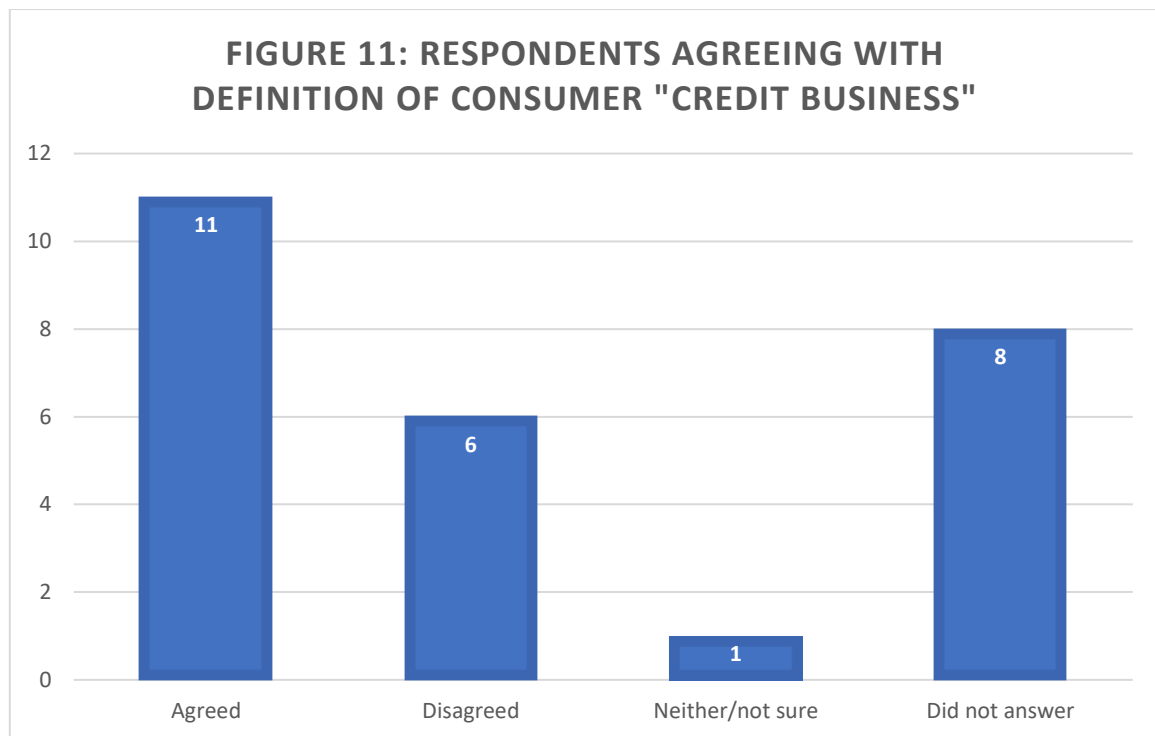


63. Seventeen respondents provided comments on the possibility of amending the definition of micro-enterprise so that it aligns in both the Ombudsman Law and Financial Services Law. Of the 17 who provided comments, twelve (71%) agreed in consistency across the two pieces of legislation. One respondent (6%) disagreed on the basis that micro-enterprises should not be in scope of the consumer credit regime at all. A further four respondents (23%) neither agreed nor disagreed (**Figure 10**).

#### OUR RESPONSE TO Q9

Commercial lending will be removed entirely from the primary law; hence it is not intended to amend the Ombudsman Law.

Question 10: Do you agree with the definition of “consumer credit business”? If not, please explain.

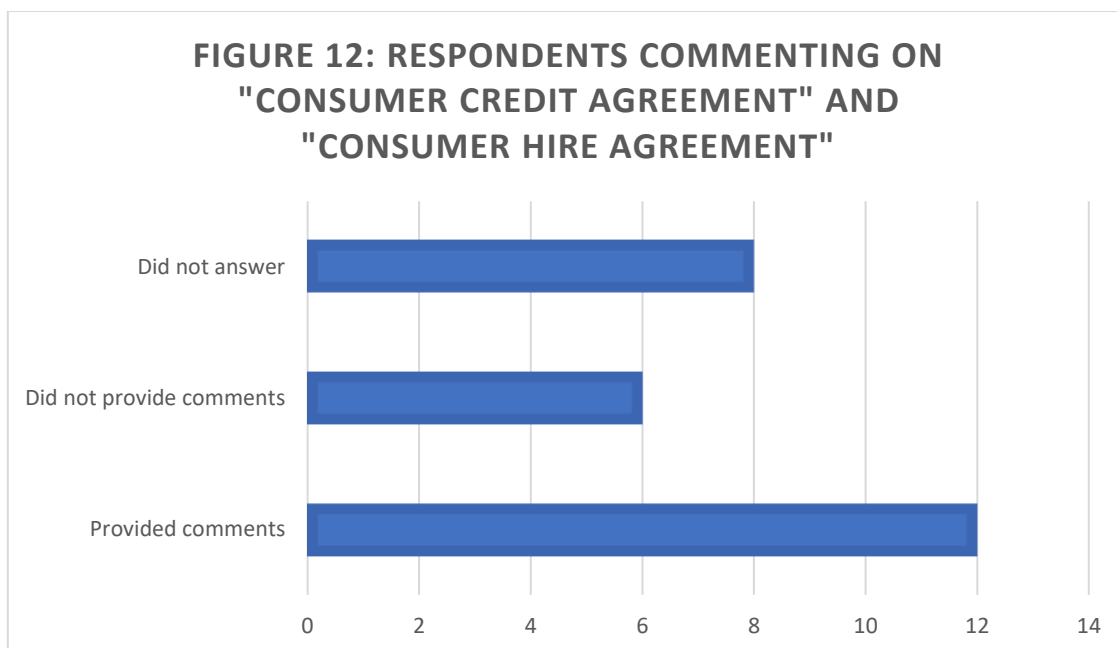


64. Most respondents (42%) agreed with the definition of consumer “credit business” (**Figure 11**). Some of those who agreed did so provided private wealth and other incidental/ancillary lending is exempted.
65. Of those that disagreed (23%), helpful comments were provided suggesting that the definition of consumer “credit business” is wide. As the definition of “credit business” is tied to the definition of “consumer credit agreement”, “consumer hire agreement” and “secured lending arrangement” it was noted a wide range of agreements and arrangements will be captured beyond those intended, particularly if micro-enterprises remain in scope.
66. It is noted that a significant proportion of respondents (31%) did not answer this question or were not sure (4%) whether they agreed or disagreed with the proposals.

#### OUR RESPONSE TO Q10

The draft Law will be amended to make it clearer that “credit business” relates to consumer credit business only, by adding in the word “consumer” so that all previous references to “credit business” will read “consumer credit business”. This, coupled with the removal of all commercial lending from the regime, will make it clear that the law relates only to retail/personal lending.

Question 11: Please provide any comments you have on the proposed definitions for “consumer credit agreement” or “consumer hire agreement”.



67. Of those that responded to this question (**Figure 12**), 10 agreed with the proposed definitions of “consumer credit agreement” and “consumer hire agreement” on the basis that comments around the definition of “consumer” were taken into account (primarily concerns regarding the inclusion of HNWIs and micro-enterprises). A further six respondents did not provide comments and eight did not answer the question at all.
68. However, commentary provided by respondents suggests that there may be issues with the definitions of “consumer credit agreement” and “consumer hire agreement”.
69. Two respondents who agreed with the proposed definitions did so on the basis that the definition of “credit” is tightened to deal with the mischief that the draft Law seeks to address. It was thought a reference to “retail” may assist here. The same two respondents agreed with the definition of “consumer hire agreement” provided that the link to the definition of “consumer” is retained as it currently is.
70. Another respondent who agreed with the definition of “consumer hire agreement” suggested that the definition of “hirer” could be difficult, and Government should consider changing the definition of “hirer” to “a consumer who has the benefit of goods” which might address potential issues, and unintended consequences, if the goods are received or not.
71. Other comments from respondents included concerns that the definition of “consumer hire agreement” includes cases where there is no contemplated transfer of title of the “goods to the hirer” or circumstances where the parties have simply agreed to extend the contract for a period exceeding three months or until terminated by either party (but otherwise not being subject to a defined period). There were also concerns raised that this aspect may capture persons who are not professionals within the credit and lending sector, but may be inadvertently caught by the consumer credit regime through hiring out goods (such as a particular piece of machinery or vehicle) for a period of time because this is incidental to their main business activity (e.g., a farmer who hires out his tractor for a period of four months to a neighbouring farmer).

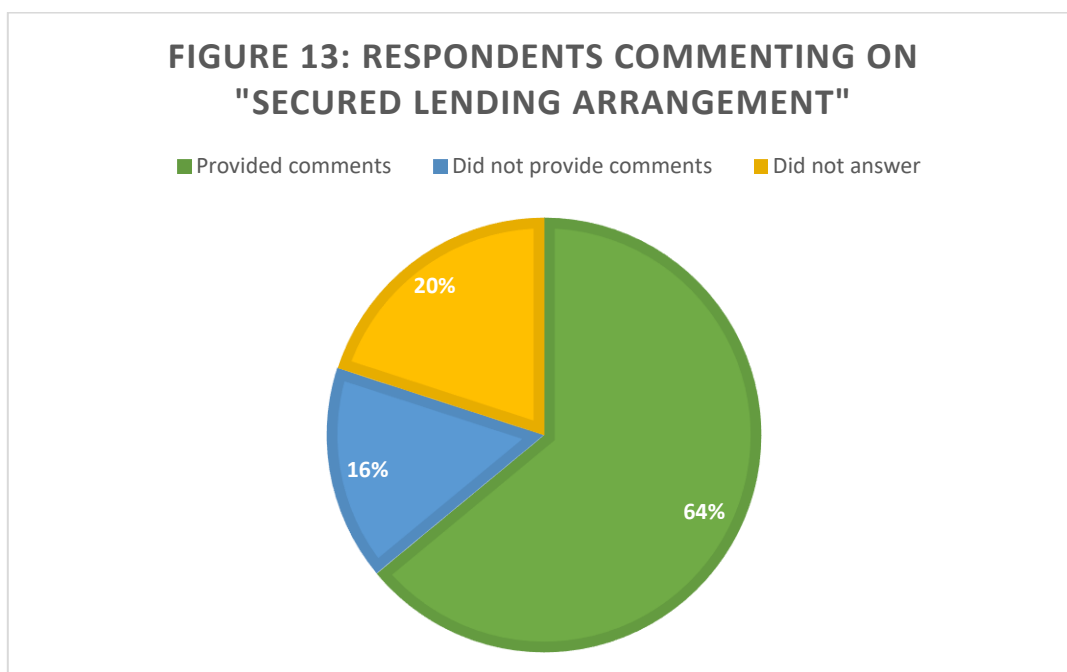


### OUR RESPONSE TO Q11

In addition to the amends made to the definition of “consumer”, the definition of “hirer” has also been amended to mirror the definition of “hirer” in the Sale of Goods and Services (Jersey) Law 2009 (“**Sale of Goods and Services Law**”). This means that the “hirer” will be the person to whom the goods are let under a hire purchase agreement.

Furthermore, the definition of “consumer credit agreement” has been amended to mean an agreement under which a person provides a consumer with credit of any amount, and for the avoidance of doubt includes a conditional sale agreement as defined in Article 1 of the Sale of Goods and Services Law and a pawnbroking agreement.

Question 12: Please provide any comments you have on the proposed definition of “secured lending arrangement”.



72. Of the 16 respondents who provided comments (**Figure 13**), five agreed with the proposed definition. The remaining 11 respondents neither agreed nor disagreed but raised queries as to the scope of the definition.

73. Respondents noted that the definition of “secured lending arrangement” only applies where the security is immovable property used in Jersey for residential purposes. Respondents also noted it did not state that it was Jersey residential property in which the consumer resides. A view was expressed that the definition may capture any security granted over investments in residential property which the consumer makes, and not just the consumer’s residence. Respondents queried whether, if this was the intention, particularly as the definition of “consumer” extends to micro-enterprises, why the protections did not apply to other non-residential investment properties, say a garage or small warehouse.

74. Respondents commented that individuals may also reside in share transfer properties which is considered “moveable” property as opposed to “immoveable” property under Jersey law and thus they felt they were not captured under the current definition.

#### **OUR RESPONSE TO Q12**

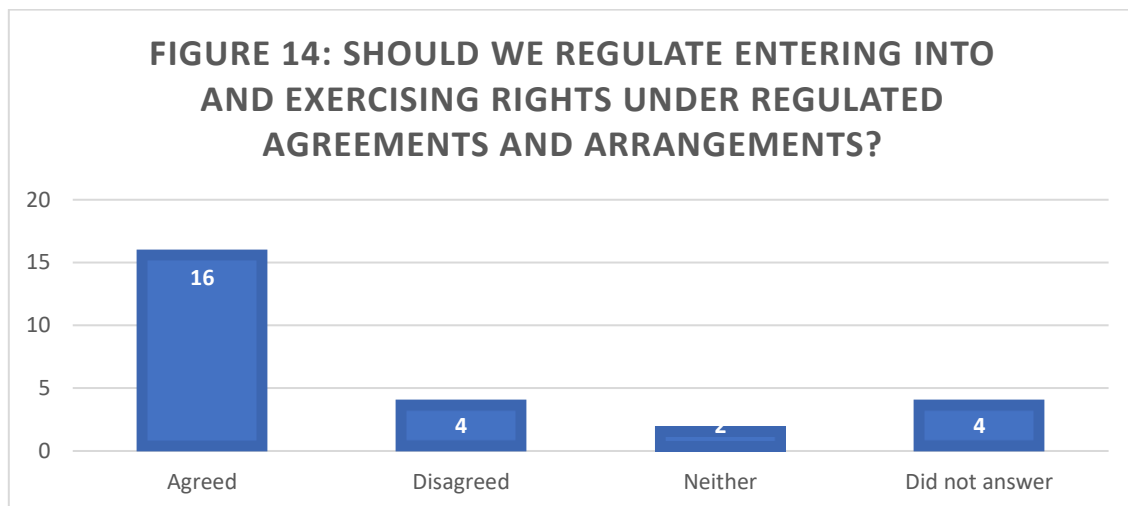
We have amended the definition of “consumer” to remove any lending to a micro-enterprise or HNWI. This will exclude some secured lending that might have been in consultees contemplation. Further, the amended definition of consumer means that it is only where a person is dealing outside of that individual’s trade, business, or profession (assuming they have one) that the protections of the draft Law will be engaged. For the avoidance of doubt, if an individual does not have a trade, business or profession, but otherwise meets the consumer definition, they will be a recipient of the consumer protections.

Lending on buy-to-let properties is specifically exempted from the protections of the draft Law on the basis such arrangements are considered investments.

The definition of secured lending arrangements already expressly includes security taken as a security interest under the Securities Interest (Jersey) Law 2012. The reason this has been included is to make it clear that the definition will capture lending secured on the shares of a company that holds a share transfer property. However, noting the comments made by respondents, the Government will ensure that the explanatory notes accompanying the draft Law make this clear.

## 2.3 Activities

Question 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.

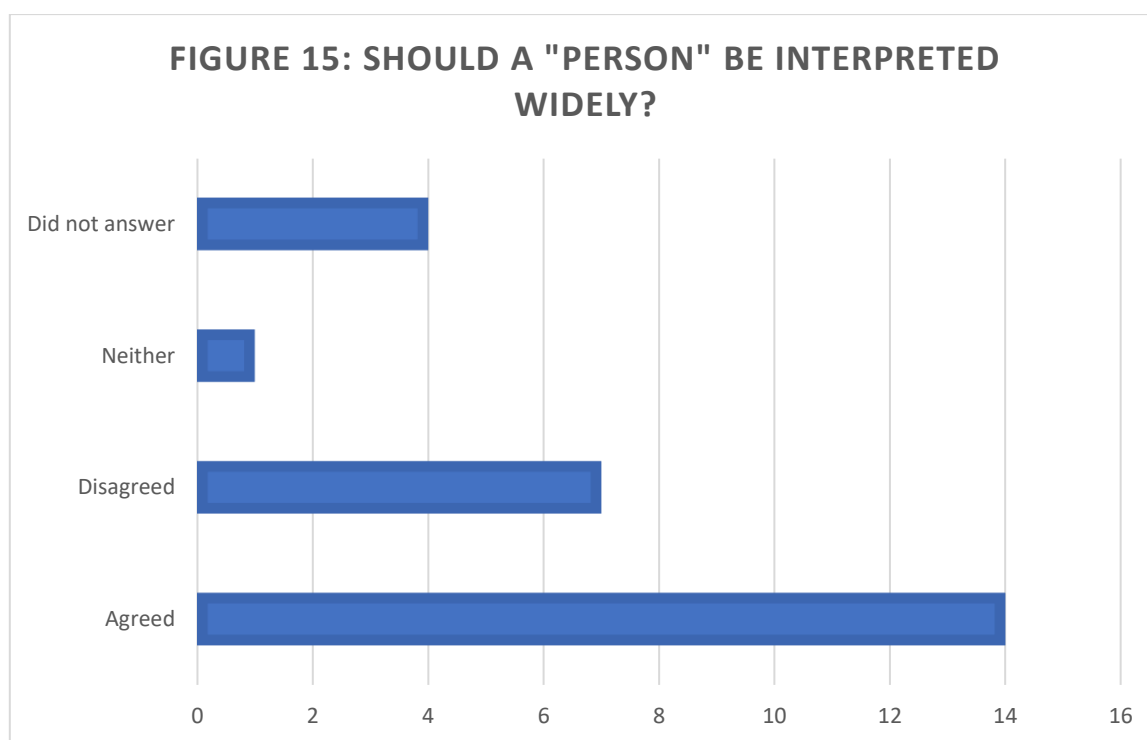


75. Notably, all but one lender agreed with the proposals to regulate the entering into and exercising rights under regulated agreements and secured lending arrangements. Those respondents who disagreed with the proposals were one lender and three lawyers. The remainder of the respondents neither agreed nor disagreed or did not answer and were made up of a variety of respondents (**Figure 14**).
76. The respondents who disagreed, did so because they would like further clarity that the proposed amendments will only apply to consumer credit service providers and not to both parties entering into the agreement.
77. Other feedback received was that it may be appropriate to limit the rights under regulated secured lending arrangements, to the primary residential home of the consumer and not just “immovable property in Jersey used for residential purposes” if it is the intention for the draft Law to only capture non-business arrangements for individuals.
78. One respondent queried the need for the additional term “secured lending arrangement” in addition to the term “consumer credit agreement”.

### OUR RESPONSE TO Q13

We will proceed to regulate the entering into and exercise of rights under regulated agreements and arrangements as planned, subject to the changes to relevant definitions. However, it may assist respondents to confirm that the effect of the draft Law is to place regulatory obligations on the lender or person exercising rights under a regulated agreement or arrangement. Consumers entering into the agreements and arrangements will not be regulated; they will be the beneficiaries of the protections provided.

Question 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.



79. Those respondents who agreed with the proposal to interpret “person” widely to include an individual or legal person carrying out one of the activities caught by the consumer credit regime by way of business were, in the main, lenders. Those that disagreed were predominantly, but not exclusively, lawyers.

80. Those that agreed did not provide a rationale for their agreement, they simply agreed with the proposal.

81. In contrast, there were numerous concerns raised by those that disagreed. The concerns largely related to the wide definition of “consumer” which includes HNWI and micro-enterprises. Thereafter, most of the remaining comments related to the “by way of business” test and recent concerns that had been aired by Industry in relation to Schedule 2 of the Proceeds of Crime (Jersey) Law 1999 (“**POCL**”) which had undergone some changes immediately before and during the Consultation Period.

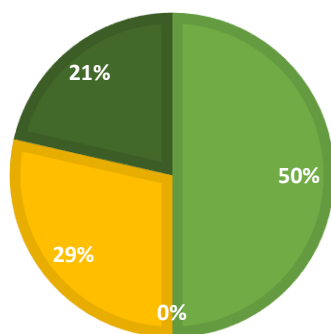
#### **OUR RESPONSE TO Q14**

Amendments have been made to the definition of “consumer” and “credit business”. This will remove any concerns relating to lending on a corporate or commercial basis being captured. Beyond the aforementioned amendments, the Government will not be making any amendments to the definition of “person”.

Question 15: Please provide any comments you have on the inclusion of Buy-Now-Pay-Later (“BNPL”) agreements in the regime.

**FIGURE 16: SHOULD WE INCLUDE BNPL AGREEMENTS?**

■ Agreed ■ Disagreed ■ Neither ■ Did not answer



82. BNPL is a type of short-term financing *that allows consumers to make purchases and pay for them over time, usually (but not exclusively) with no interest*. The Consultation Paper proposed that BNPL ought to be in the scope of the proposed regime only to a limited extent. Specifically, it was proposed that short-term (less than 12 months) interest free credit should not be caught by the new regime. Further it was proposed that store credit will be included where it falls within the definition of consumer credit business and will not apply where credit is only provided by the store in respect of returned goods.

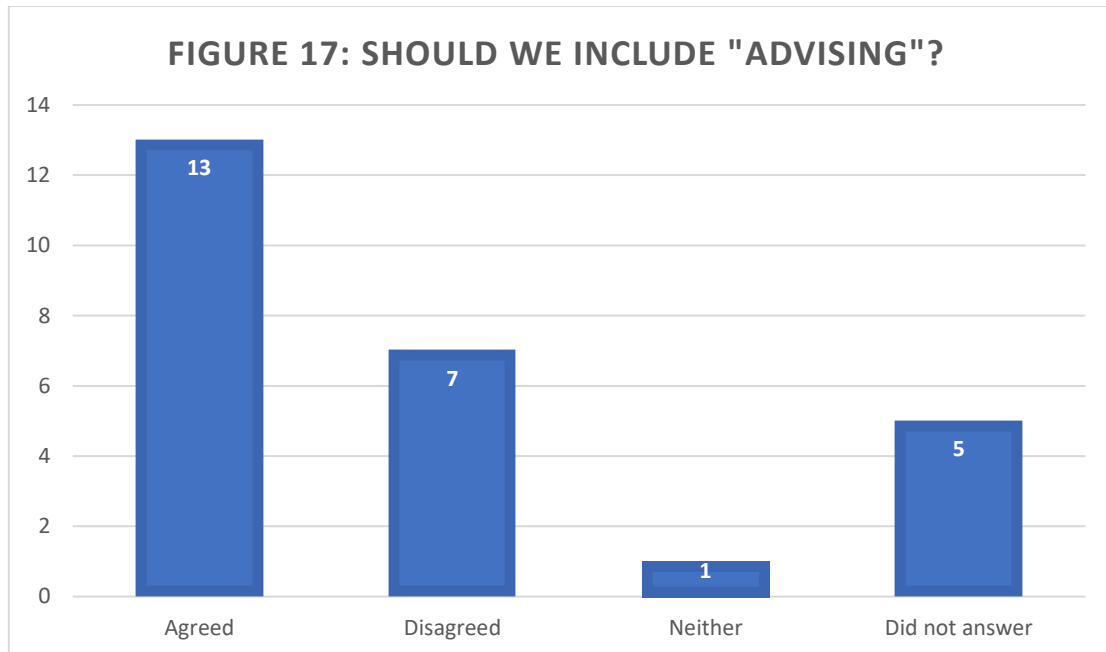
83. Of the 16 respondents that provided comments, zero respondents disagreed outright with the proposal to regulate BNPL agreements. Fourteen respondents (54%) positively agreed with the proposals noting them as sensible given there are already concerns of bad practice associated with BNPL agreements in Jersey and BNPL agreements are products that are high risk to consumers.

84. The remaining six respondents (23%) who commented, neither agreed nor disagreed but queried the way in which the draft Law proposes capturing BNPL agreements particularly as the UK has slowed down its incorporation of BNPL agreements into its consumer credit regime, though this is thought to relate to the UK’s recent introduction of “consumer duty”. Two other respondents were Telecoms companies whose concerns related to the provision of mobile phones whereby data provision forms part of the consumer finance package.

#### OUR RESPONSE Q15

The Government will consider the best approach to implementing a limited form of BNPL regulation via secondary legislation and codes of practice, applicable only to credit provided for a period longer than 12 months or that is not interest free. This is likely to be captured in a limited exemption from the new regime for short term interest free BNPL. The Government will work closely with the JFSC and Industry to deliver proportionate regulation that ensures appropriate consumer protections.

Question 16: Do you agree with the proposals that bring “advising” within scope of the proposed regime? If not, why not?



85. Most respondents who disagreed with the proposal to include “advising” in scope of the regime (**Figure 17**), did so on the basis they felt greater clarity was needed on what is meant by “advising” particularly considering the comments made in respect of the wide definition of “consumer”. It is notable that zero respondents were outright against the proposal to include “advising” within.
86. The legal community queried why the exemptions that are in place for credit broking, debt adjusting, debt-counselling, debt-collecting and debt administration are not also in place for advising, administering, and arranging.

## OUR RESPONSE TO Q16

The Government has amended the definition of “consumer” and “credit business”. The Government has also sought to mitigate the risk of duplication of classes of regulated activities by streamlining the activities that are to be regulated. The Government is persuaded that there is some overlap between the activities of “administering” and “arranging” under paragraph 5 and 6 of Part 3 of Schedule 1A and “credit broking” in Part 4 of Schedule 1A of the draft Law.

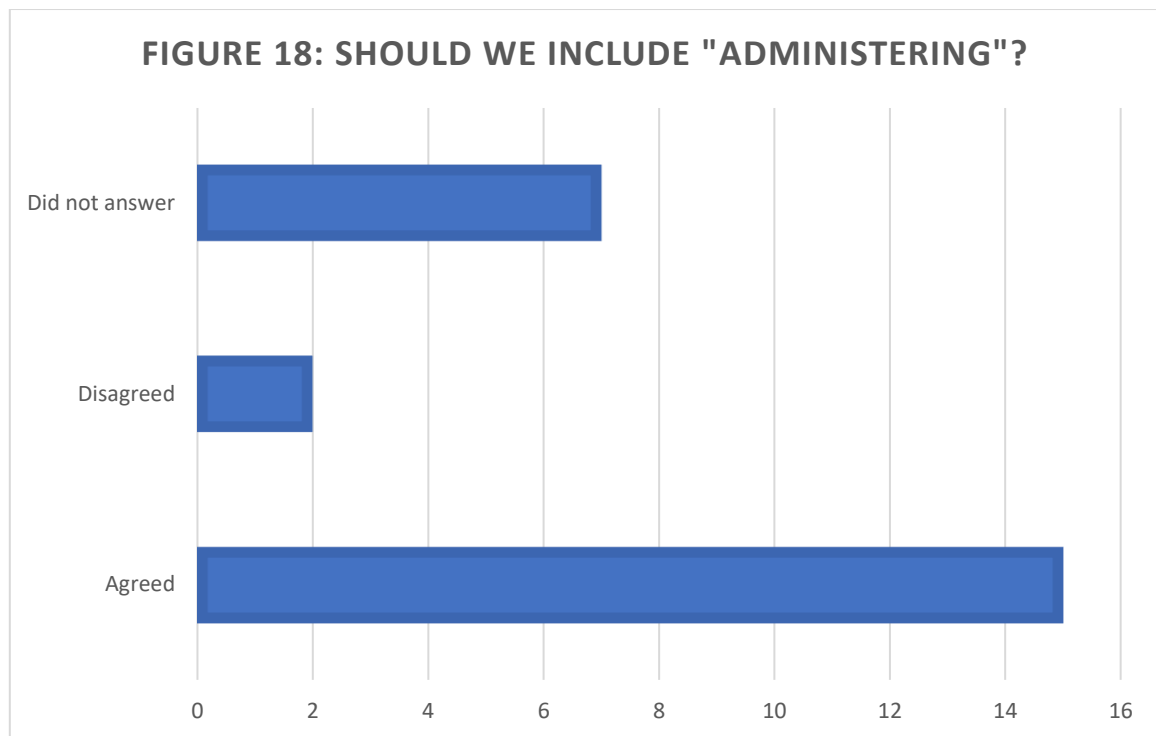
Having considered the activities in the round and having taken account of the activities regulated under Guernsey legislation and the UK’s Regulated Activities Order, the Government will simplify the activities that are to be regulated under the proposals consulted on at Parts 2 to 5 of Schedule 1A of the draft Law. The activities that will be regulated going forwards are:

1. Entering into and exercising rights under regulated agreements and arrangements
2. Advising on regulated agreements and arrangements
3. Credit broking
4. Debt (including debt adjusting, debt counselling and debt administration)

The Government recognises that the proposals in the draft Law for the regulation of debt collection do not align with the approach taken in Guernsey. The Government also recognises that other island agencies, such as Trading Standards and CIFO may be better suited to regulate these activities. As such, debt collection will be regulated via secondary legislation and the regulation making power at Article 31A of the draft Law will be amended to reflect this.

For clarification, if a debt collector carries out any other debt related activities which are to be regulated by way of the primary law, then subject to any exemptions that may exist, they will be expected to fully comply with the draft Law and obtain a license from the JFSC to carry out these activities.

Question 17: Please provide any comments you have on the proposals relating to “administering” and bringing the activity within scope of the proposed regime.



87. Of the 17 respondents who provided comments on the proposals to include “administering” within scope of the regime (**Figure 18**), only two respondents (both lenders) were against. Those that disagreed with including “administering” did so on the basis that they felt it unnecessary as debt collecting is being covered as a separate activity.

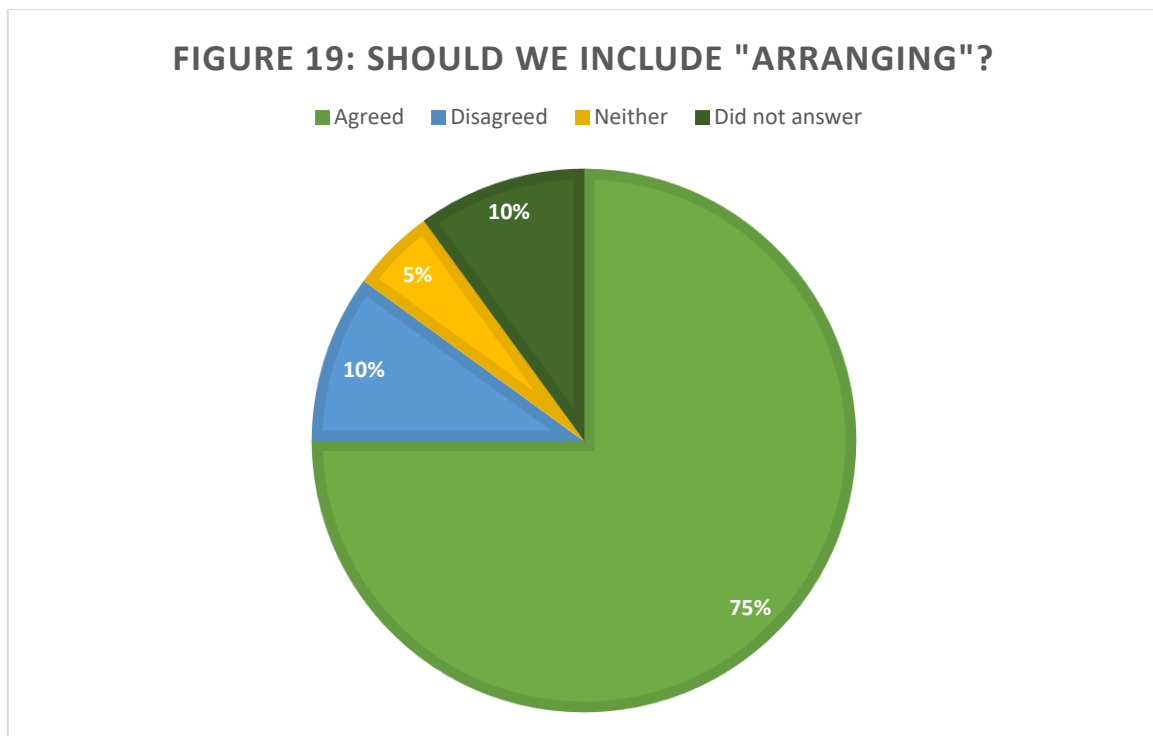
88. The 15 respondents who agreed with the proposals provided helpful feedback. They cautioned against double regulation for certain entities and felt that the tightening of the definition of “consumer” may help to address any mischief at which the draft Law is aimed and alleviate concerns that the Government is raising the administrative bar of doing business in Jersey for sophisticated and/or non-consumer focussed borrowers. Otherwise, comments from the legal community related to the preference for the exemptions that are in place for credit broking, debt adjusting, debt-counselling, debt-collecting, and debt administration.

**OUR RESPONSE TO Q17**

The regulated activities are to be simplified. Please see response to Q16 above.



Question 18: Please provide any comments you have relating to the proposals to bring “arranging” into scope of the Financial Services Law.



89. A total of 15 respondents (75%) agreed with the proposal to include “arranging” in scope of the consumer credit regime (**Figure 19**). Eight of those respondents did so subject to exemptions extending to the legal community as with “advising” and “administering”, refining the wide definition of “consumer” and on the proviso the Government does not double regulate certain activities.

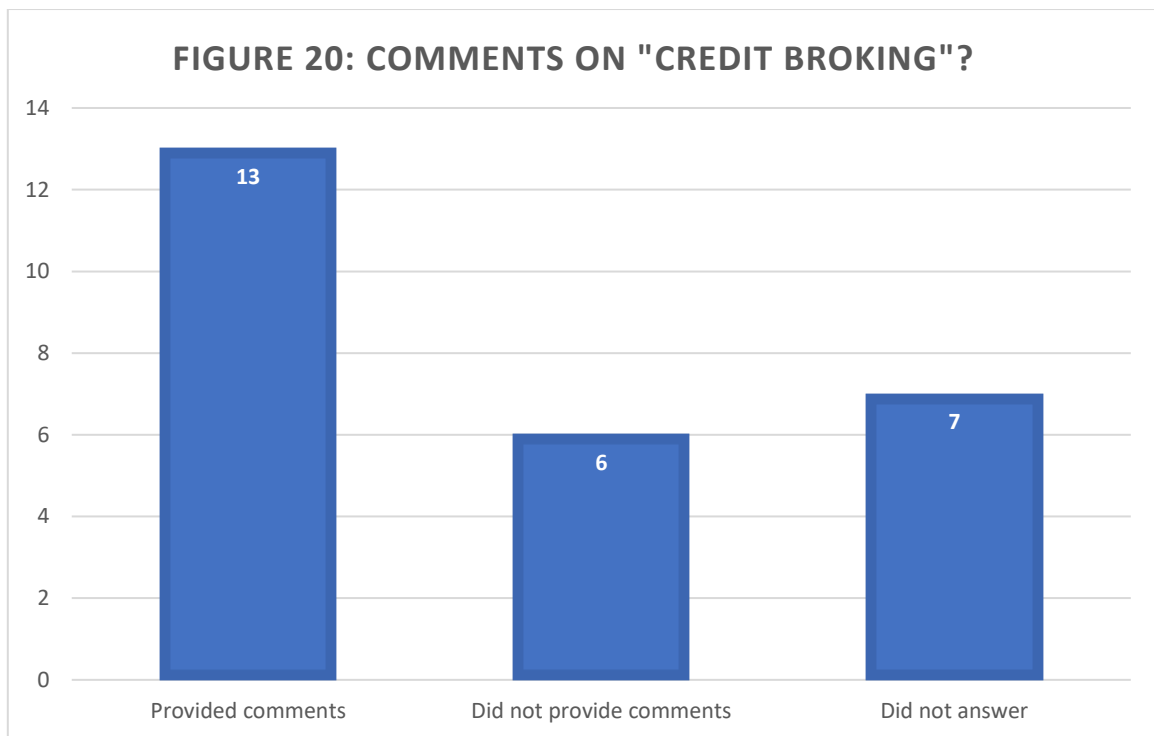
90. Two respondents (10%) disagreed with the proposal. They did so because they felt TCB ought not to be caught as TCB administrated borrowers are not consumers. The other respondent that disagreed, felt that if the activity is purely administrative in nature, then it ought not to be captured, unless advice is also being provided.

91. One respondent (5%) neither agreed nor disagreed with the proposals and two (10%) did not answer the question.

**OUR RESPONSE TO Q18**

The regulated activities are to be simplified. Please see response to Q16 above.

Question 19: Please provide any comments you have on the proposals relating to “credit broking”.



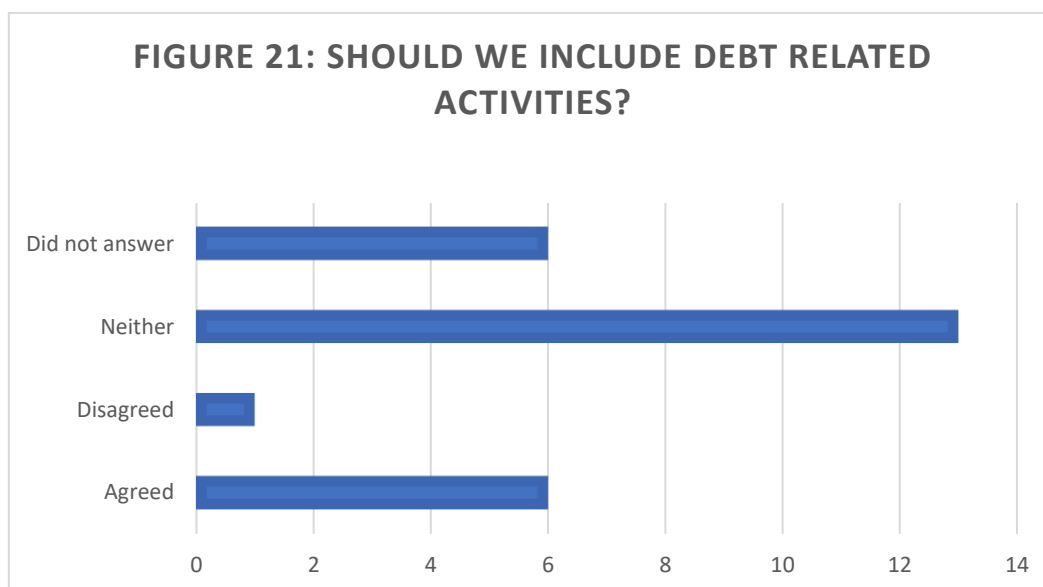
92. The majority of respondents who provided comments were in agreement with the proposal to include “credit broking”, albeit some felt there could be greater clarity regarding the definitions used.

93. Those respondents who disagreed, did so on the basis that the definitions of “consumer” and “credit business” and regulated agreements and arrangements were widely interpreted and included commercial lending.

#### **OUR RESPONSE TO Q19**

The Government has narrowed the definition of “consumer”, making it clear it relates to retail/personal lending only. As per the response to Q16, we will retain “credit broking” as a regulated activity within the consumer credit regime. Further clarity and guidance as to what is meant by “credit-broking” will be provided.

Question 20: Please provide any comments you have on the proposals bringing “debt adjusting”, “debt counselling”, “debt collecting” or “debt administration” into scope.



94. Six respondents agreed with the proposals to bring into scope “debt adjusting”, “debt counselling”, “debt collecting” and “debt administration” (**Figure 21**). One of those respondents also felt that there should be an exemption for charitable bodies in primary law rather than via the proposed secondary law exemptions.
95. One respondent disagreed entirely with the proposals. Six respondents did not answer this question and the remaining thirteen respondents neither agreed nor disagreed with the proposals.
96. Some additional feedback was provided by the respondents who neither agreed nor disagreed. This feedback included a preference for clarification of i) the intention behind the inclusion of debt administration, ii) the scope of both debt counselling and debt administration, and iii) whether the regime is intended to capture debt related to unpaid fees for the supply of goods and services.

#### **OUR RESPONSE TO Q20**

The Government notes the comments relating to the clarity that will be required around the debt related activities. The Government will simplify the regulation of debt related activities as set out at the response to Q16 above.

Nevertheless, the Government feels that it is important to know who is providing debt related activities to consumers, and those who do should inform the JFSC of their activities in this regard. However, as indicated in the Consultation Paper, we would not expect, for example, charitable bodies to comply with the remainder of the regime. Further exemptions will be provided in secondary legislation and clarity will be given around the intention behind further exemptions as required.

For clarity, the regime is only intended to apply to debt related to consumer credit provided under a consumer credit agreement, consumer hire agreement or secured lending arrangement. It will not apply to unpaid fees for the supply of goods and services.

## 2.4 Private Lenders

Question 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.

97. Only two respondents to the Consultation Paper considered themselves as private lenders. However, a total of ten respondents helpfully provided comments on the characteristics that should be used to distinguish private lenders for the purposes of the consumer credit regime.
98. One of the two private lenders felt that consumer credit should not be regulated at all and thus did not provide comments on the characteristics of a private lender. The other private lender was a regulated trust company business which stated it very rarely did any private lending and any lending it did do, would be unlikely to be a consumer and thus again offered no commentary on the characteristics of a private lender.
99. Of the remaining eight respondents who provided comments, but were not private lenders, 56% were lawyers, 33% were other types of lenders and 11% were trust companies.
100. From the feedback received from respondents who were not private lenders, we heard that many private lenders in Jersey may not have significant technical experience/qualifications relating to lending but have funds they make available to borrowers. For example, we understand there are many elderly individuals who may top up their income through private lending either directly or indirectly through a company established for these purposes. They may lend to family, acquaintances, often by word of mouth, to persons introduced to them by say lawyers, or by using brokering services offered by a credit broker.

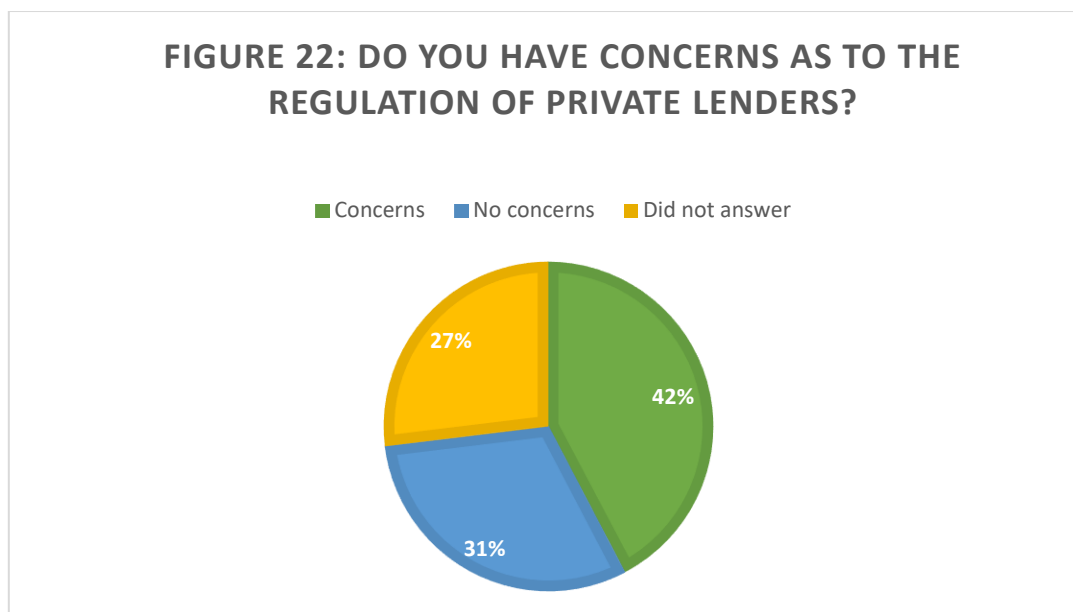
### OUR RESPONSE TO Q21

The limited response to the consultation directly from private lenders makes it more difficult to draw conclusions about their views. It is hoped that it will be possible to engage with the private lending sector more widely at later stages of the consultation process before the implementation of the draft Law.

The Government was grateful for representations made by the legal community and some non-bank lenders (institutional lenders) setting out some of the characteristics of private lenders in Jersey which have helped determine Government's response to private lending, and which is set out below.

The Government is also grateful to those who attended a government-run workshop on 24 January 2024 to discuss the proposed regulation of private lenders in more detail. Those discussions have helped to shape the Government's responses to Q22 and Q23 below.

Question 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.



101. Eleven respondents (42%) raised concerns relating to the regulation of private lenders (**Figure 22**). Of the 11 that raised concerns, 46% were lawyers, 27% were lenders, 18% were trust companies and the remaining 9% is attributed to JFL.

102. We heard that by requiring individual private lenders, as characterised in the feedback to Question 21, to comply with difficult and complex regulatory regimes would be overly burdensome and may result in individual private lenders pulling out of this market space altogether. We also heard this may impact credit being made available to both individual borrowers and small businesses which may affect the wider economy.

103. There was a clear indication from Industry that the “by way of business” test is problematic particularly considering the use of different terms “as a business” and “by way of business” in the POCL where, it was commented, the distinction is not entirely clear. Industry considered that, without further exemptions, loans between family members might be captured if advanced for business purposes, as would business transactions between trustees and beneficiaries and intra-group lending all of which it is not typically “consumer” lending.

#### **OUR RESPONSE TO Q22**

The Government recognises that a lighter touch regime may be necessary for private lenders, hence the questions set out in the Consultation Paper.

The Government does not intend to include detailed provision for an exemption for private lenders in the draft Law. However, recognising the concerns raised in the feedback to the consultation, the Government will provide certain exemptions for private lending in secondary legislation, the purpose of which will be to limit the scope of the JFSC’s supervision of private lenders where that would not be proportionate to their lending activities. These exemptions will be developed through further consultation with the JFSC, Industry and private lenders. Please refer to the Government’s response to Q23 below for more details.

Question 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.

104. Twelve respondents provided comments on categories of private lenders that should be exempt from the draft Law. These respondents suggested that a few exemptions or reduced regulatory burdens in favour of private lenders may mitigate the concerns raised in feedback to Question 22.

105. The suggested exemptions primarily relate to loans without a retail or consumer nexus and include, for example:

- Loans between friends, family members or closely associated parties (unless the loans are secured)
- Financing arrangements between connected entities/parties which arise because of an existing primary relationship (e.g., shareholder loans, intra-group lending, loans by trustees to beneficiaries) as opposed to the borrower and lender relationship coming about because the lender is in the business of lending
- Loans where there is an element of deferred consideration

106. Suggested reduced regulatory burdens include, for example:

- Placement of a cap on lending by HNWI's as per Guernsey's regime (e.g., permit lending provided it is below £2m per annum, makes up less than 10% of the HNWI's income and the HNWI enters into such loans no more than twice a year)
- Limiting the requirement to register with the JFSC and the need to comply with regulatory burdens to professional lenders only, which in turn could be linked to the licenses granted under the Control of Housing and Work (Jersey) Law 2012
- Tailor secondary legislation for private lenders so they are not overburdensome, e.g., removing the need or altering the processes for personal questionnaires ("PQs") for Principal and Key Persons and data collection

### OUR RESPONSE TO Q23

The Government and the JFSC are carefully considering the correct approach and the extent to which supervisory and codes of practice requirements relating to corporate governance and financial stability, such as the collection of data and the completion of PQs, are necessary and proportionate in respect of the lending activities of private lenders.

A government-run workshop has already taken place on the proposals to regulate private lenders and further consultation will follow as proposed regulations develop.

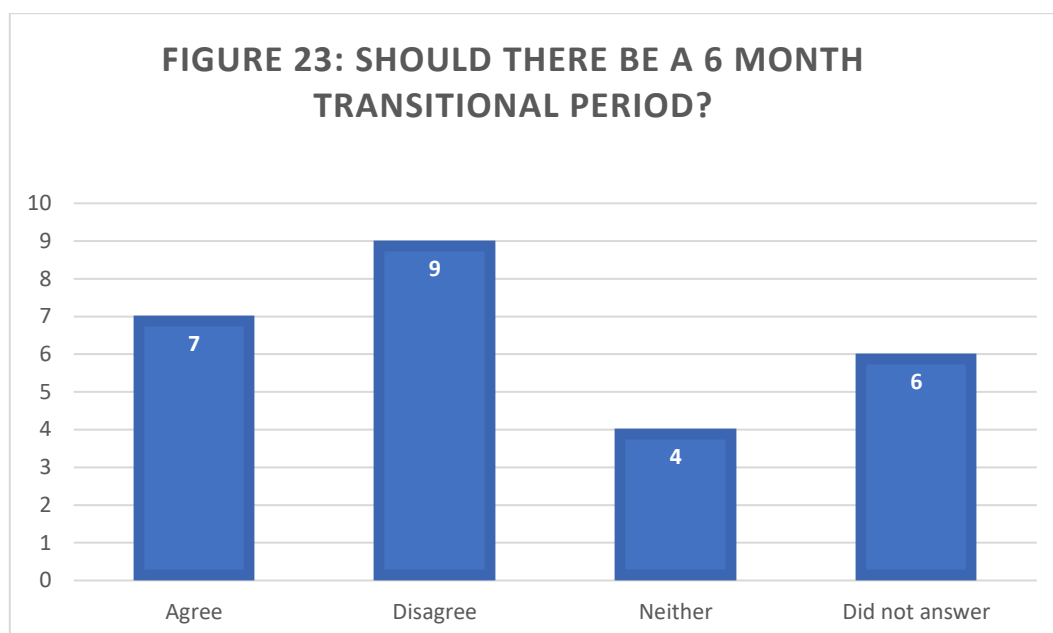
Initial consultation feedback suggested that we assume a position like that adopted for private lenders in Guernsey. For context, the Guernsey rules provide that the Guernsey Financial Services Commission may approve an exemption from registration for a period of 3 years, which can be renewed, and is subject to the following conditions that the lender must comply with:

- It must make no more than 2 loans per annum
- It must have a maximum portfolio of no more than £2m
- It must comply with all the relevant regulatory requirements in respect of its lending to consumers
- It must appoint a service provider to monitor compliance

However, following a focussed workshop with Industry in January, the Government recognises that some respondents may not support the adoption of the same approach in Jersey. For example, some concerns were expressed that the value of the loan portfolio attributed to Jersey private lenders, and the number of loans permitted, ought to be reflective of Jersey's market. It also became apparent during the workshop that there may be a role for a regulated broker to play in the relationship between private lenders and consumers, which the Government is keen to explore.

The Government and the JFSC will carefully consider these and other approaches, and the extent to which alternative requirements, such as requirements preventing the inclusion of unfair terms in consumer lending contracts and/or setting requirements around annual percentage rates ("**APRs**"), can be imposed as a more targeted alternative to traditional codes of practice requirements that would otherwise be supervised by the JFSC. As part of our continuing engagement in preparing secondary legislation, the Government will continue to work with the JFSC and Industry on this.

Question 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 period is required to enable individual private lenders to comply with their obligations under the draft Law? Please explain your answer.



107. Of the seven respondents who agreed with the proposed six-month transitional period for the regime, only one respondent agreed outright that six months would be sufficient (**Figure 23**). The remaining six respondents who agreed, did so on the basis that all secondary legislation, codes of practice and guidance are clear from the outset and that sufficient resources were available to support those who needed to make the transition. Furthermore, those who agreed did so on the basis their position may change following sight of the secondary legislation.

108. Nine respondents disagreed. Six of those disagreeing felt six months was insufficient. We heard 12 months would be more suitable.

#### OUR RESPONSE TO Q24

The Government has considered the concerns of respondents that a six-month period would not be sufficient to implement the new regime once the details are settled. As such, the Government will provide for a 12-month implementation period once the draft Law has been enacted.

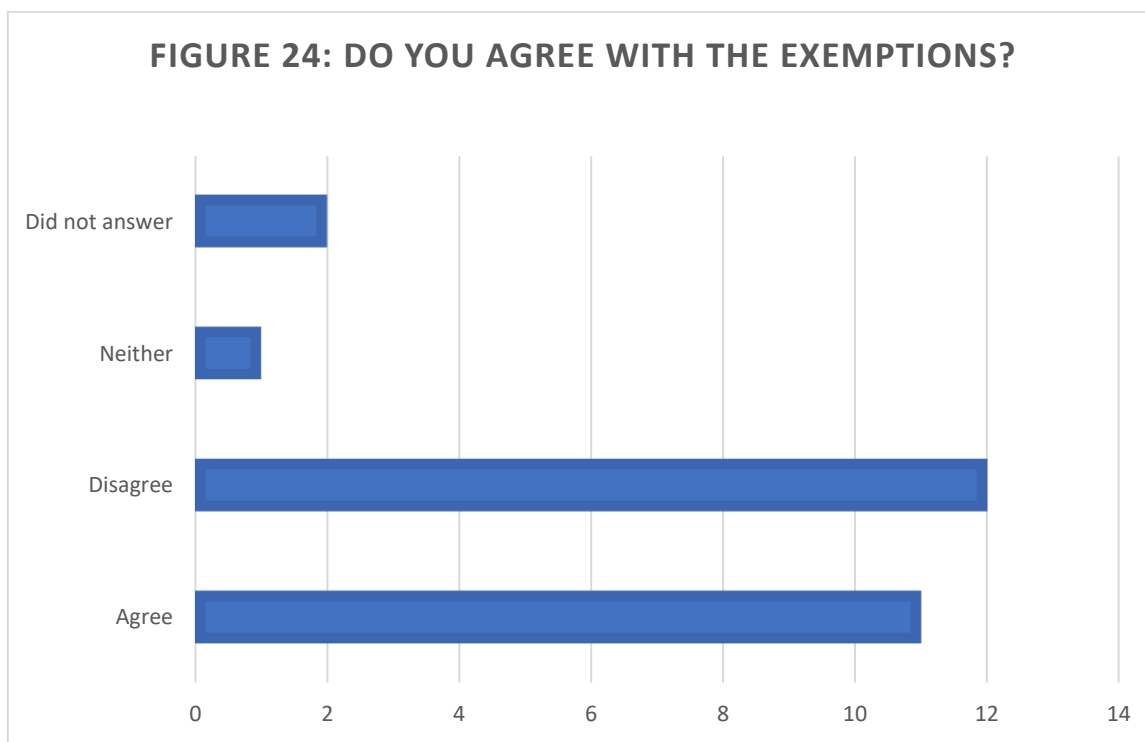
The Government hopes that by significantly extending the timeline for enactment and implementation of the legislation, this will enable Industry, the JFSC, Trading Standards and CIFO to prepare thoroughly for the coming into force of the new regime. It will also allow steps to be taken to work closely with stakeholders to develop the secondary legislation and codes of practice.

The Government will continue to work with the JFSC and other key stakeholders to establish and maintain working groups. As indicated elsewhere in this paper, the Government has already begun the consultation process for the secondary legislation with a series of workshops that took place in January 2024. The Government will continue to engage and consult on the formulation of the secondary legislation throughout 2024 before the law is brought into force.



## 2.5 Exemptions

Question 25: Do you agree with the proposed exemptions to the proposed regime? If not, please explain.



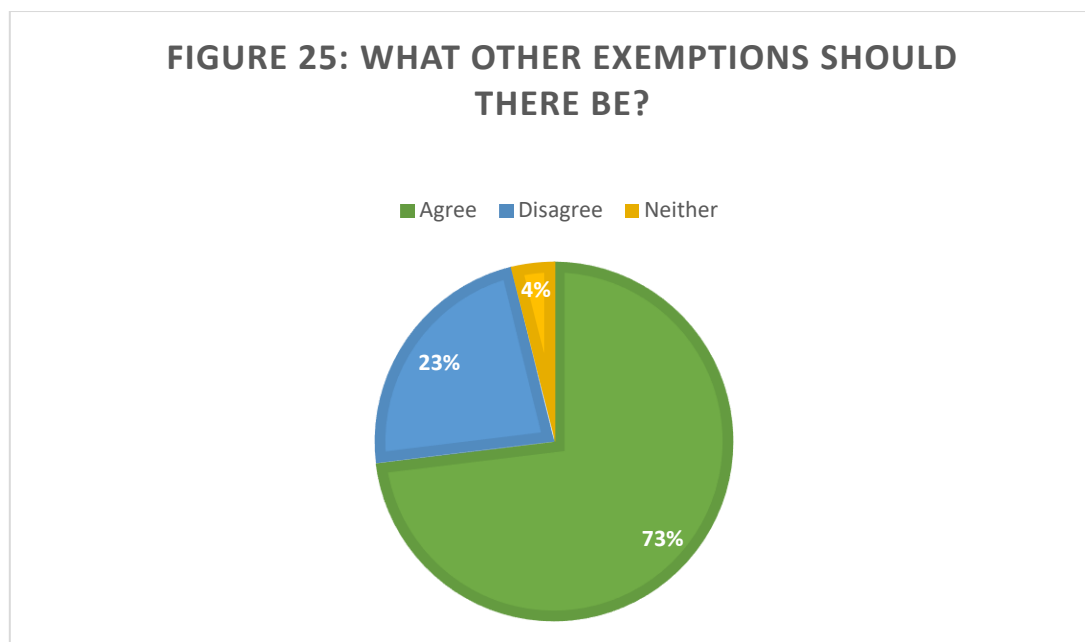
109. Of those respondents who agreed, seven unequivocally agreed with the proposed exemptions (**Figure 24**). The remaining four respondents who agreed felt the exemptions needed to be increased beyond those already set out, particularly because of the inclusion of HNWI and micro-enterprises in the definition of “consumer”.

110. The 12 respondents who disagreed with the proposed exemptions felt the exemptions did not go far enough, primarily for the same reasons as those who agreed with the proposed exemptions and felt additional exemptions are needed.

### OUR RESPONSE TO Q25

On the basis that we are amending the definition of “consumer” to exclude commercial lending and providing an opt-out for HNWI, aside for the additional exemption in respect of Lombard lending, overseas lenders and the inclusion of Telecoms companies into the “essential services” exemption (for all of which see above) it is not expected that further exemptions will be incorporated in the draft Law. We will carefully consider with the JFSC and Industry whether any further additional exemptions may be appropriate to include in the secondary legislation.

Question 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.



111. A total of 19 respondents (73%) agreed with the proposed exemptions (**Figure 25**) but felt other exemptions should also be incorporated into the proposed regime.

112. Industry commented that Guernsey’s exemptions should be followed to ensure parity in the islands’ markets. By way of example, this would include (not exhaustively) exemptions for:

- Private lenders
- Non-resident businesses that are not conducting business in or from within Jersey (unless there is a presence and solicitation in Jersey)
- Lending to non-Jersey residents
- All trustee and trust company business lending activities
- Lending to family and friends

113. The banks and some non-bank lenders felt Lombard lending should be excluded as it is predominantly used for more sophisticated investment purposes as opposed to lending to individual consumers.

114. The legal community thought the exclusion at paragraph 30(1) of Schedule 1A should be extended to include paragraphs 4 and 6 of Part 2 of the proposed Schedule 1A in the draft Law.

115. However, we heard that if HNWI and micro-enterprises are removed from the definition of “consumer” this may remedy the need for some, but not necessarily all, of the proposed exemptions mentioned above.

116. Separately, Telecoms companies felt strongly that their activities should form part of the exemption for “essential services” because they are already regulated by the JCRA for consumer protections relating to data service and billing. It was felt that to regulate them for consumer credit activity would be overburdensome and unnecessary.

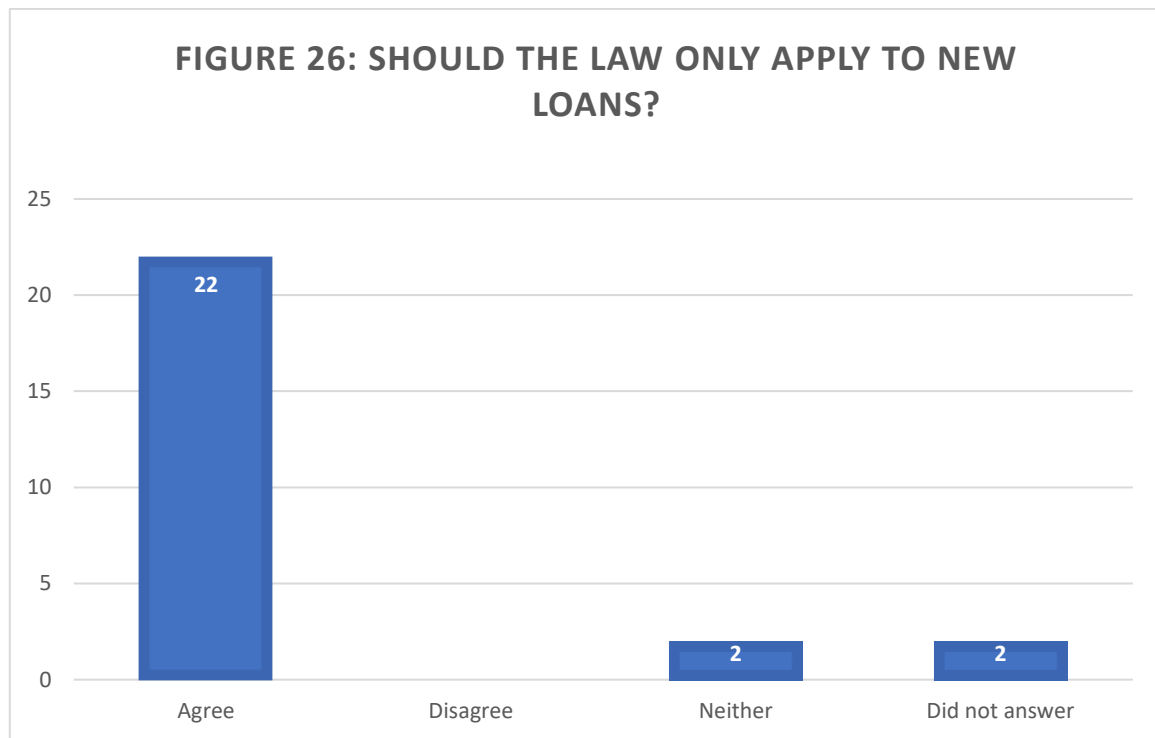
### **OUR RESPONSE TO Q26**

The Government's response in respect of the need to exempt Telecoms companies and private lenders is set out above. The Government is considering whether the exemption for lending by trustees should be expanded and is working closely with the JFSC and Industry, including JATCo to explore this.

Lending to family and friends by an individual who is not acting by way of business will not be captured by the provisions introduced by the draft Law.

The comment in respect of lending by overseas lenders to people in Jersey is addressed below in response to Q29.

Question 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?



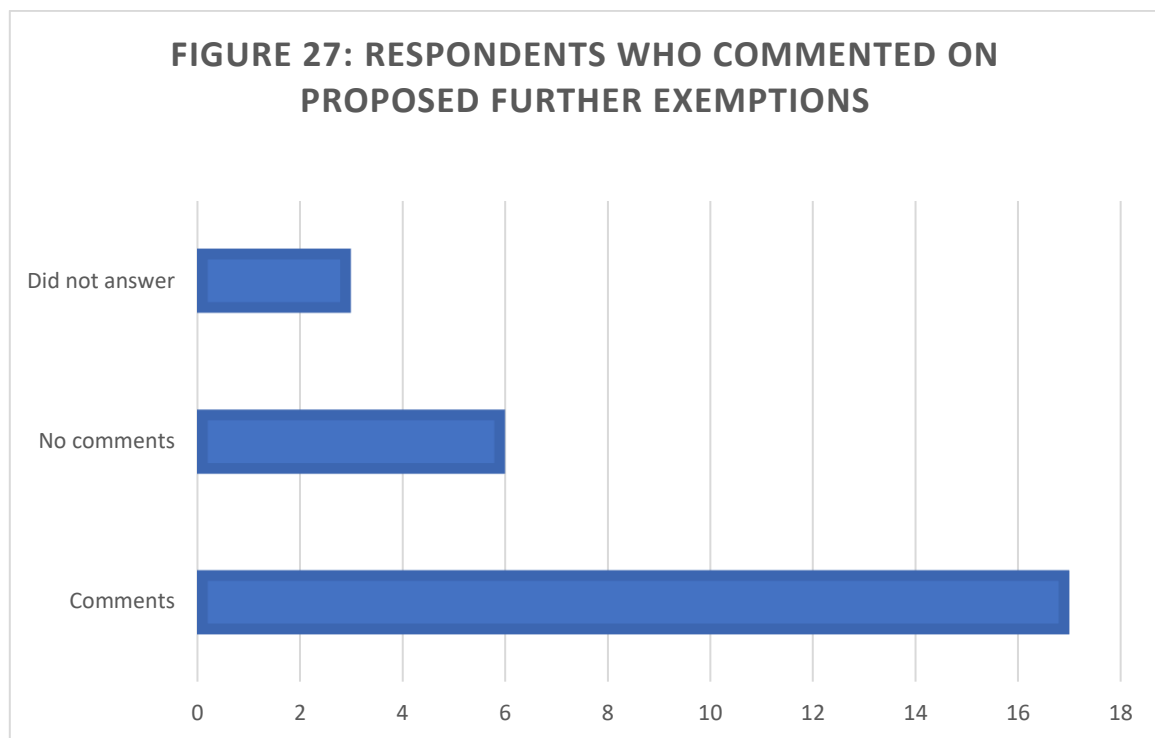
117. Respondents overwhelmingly agreed the draft Law should only apply to those loans which come into effect after the law comes into force and that it should not be retrospectively applied (**Figure 26**).

118. No respondents disagreed. However, two respondents neither agreed nor disagreed. Of these “neither” respondents, one commented that businesses will need time to comply with the proposed regime, and the other simply raised a question about how the regime will deal with grandfathering and run-off agreements. The same respondent also queried whether and how it is proposed unfair terms will be applied to existing loans.

**OUR RESPONSE TO Q27**

We will proceed with the proposal to apply the law to all new loans (i.e., all loans entered into after the law comes into effect). It will not be applied retrospectively.

Question 28: Bearing in mind the JFSC will consult later, please provide any comments you have on the proposed further exemptions.



119. Of those that provided comments (**Figure 27**), most respondents referenced comments made in response to Questions 25 and 26.

120. Additionally, we heard that clarity is needed in respect of the following proposed exemptions:

- Activities where a person has a connection to the agreement
- Activities not causing a deal
- Enabling parties to communicate

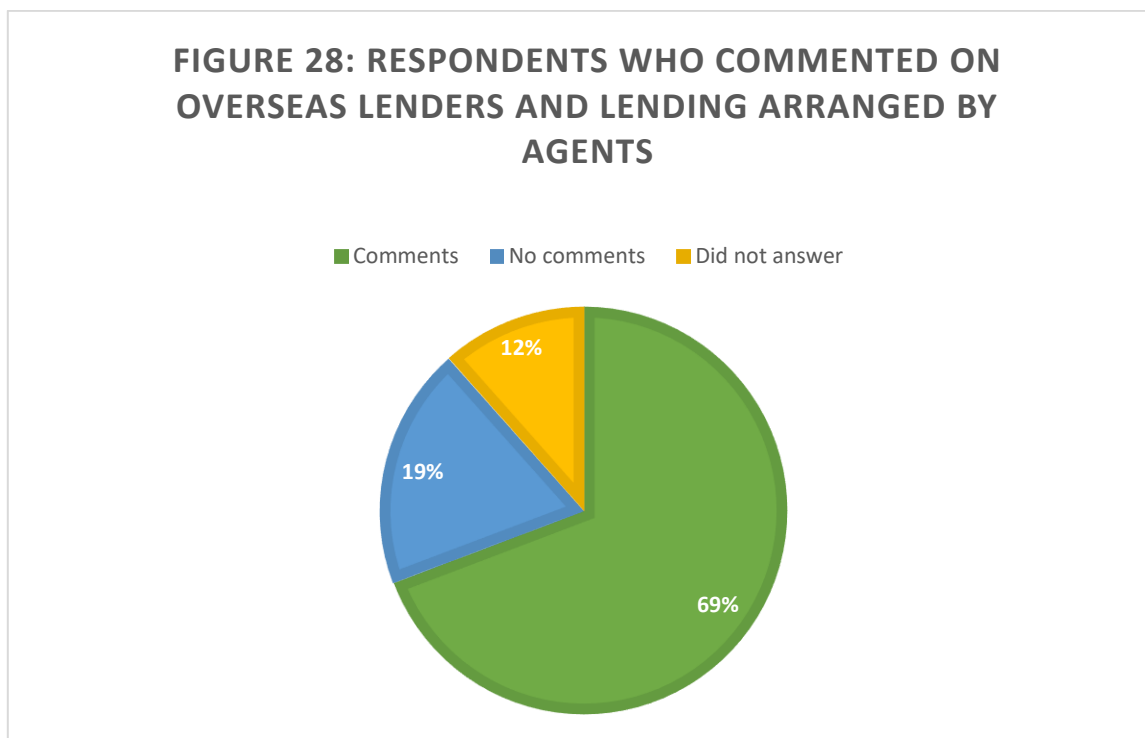
121. Furthermore, there was a consensus that there should be consistency in exemptions with Guernsey’s regime.

#### **OUR RESPONSE TO Q28**

The Government has made amendments to the definition of “consumer” that will address the risk of inter-business lending activity being caught by the new regime. Government led Industry workshops took place in January 2024 on the treatment of and potential exemptions that may be given to certain overseas lenders, private lenders, HNWI’s and trustees. Discussions with the JFSC and Industry continue, and to the extent any additional exemptions or specific regulations are required to achieve the desire both to ensure the regime is proportionate and to align it with the regime in neighbouring jurisdictions (including Guernsey), these will be considered as part of the work with the JFSC and Industry on the secondary legislation and codes of practice.

## 2.6 Overseas Lenders and Agents

Question 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.



122. Commenting respondents (**Figure 28**) raised concerns a lesser regime for overseas lenders would be creating a disadvantage to local lenders in favour of overseas lenders. It was felt there should be alignment with Guernsey's light touch model to mitigate this and lenders should be exempt where they have no presence and/or there is no solicitation in Jersey.
123. It was suggested, by both lawyer and non-lawyer respondents, that an exemption to the overseas distributor exemption for investment business should be included.
124. Where lenders have agents in Jersey, respondents were of the view the agent should be in scope as the arranger, rather than making it unduly burdensome for lenders to get capital into the island. One respondent queried whether there would be any restrictions/caps on the number of agents and whether dealers doing credit broking should have their own licence as agents under the same lighter touch regime.

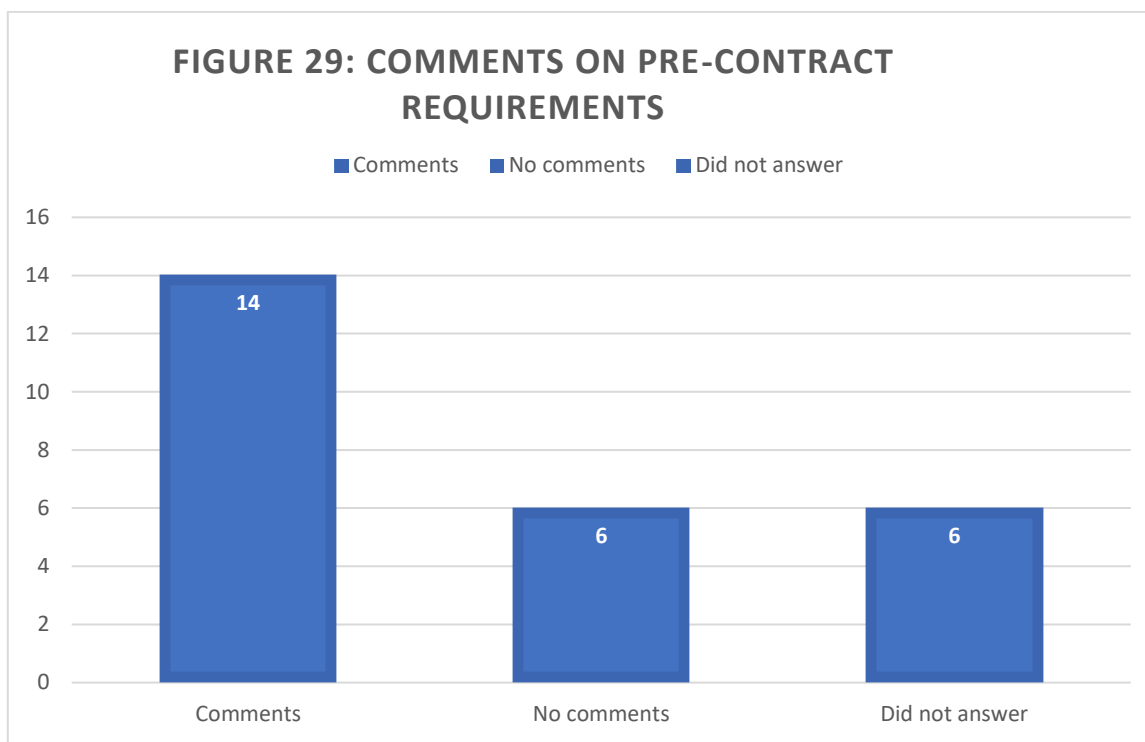
### **OUR RESPONSE TO Q29**

To ensure consumer protections and choice in the marketplace, it is important that businesses operating in other jurisdictions can operate in Jersey. It is essential that the ability for overseas lenders who operate in well-regulated jurisdictions and who wish to operate in Jersey is not overburdensome to prevent entry into the market. The Government is equally conscious that any exemptions from supervision that might be provided to overseas lenders from well-regulated jurisdictions do not put local lenders at a disadvantage resulting in a negative effect on the local market.

Specific consultation with the JFSC and Industry took place in January 2024 around exemptions in secondary legislation, codes of practice and guidance that may apply to overseas lenders. Discussions centred on potential exemptions for overseas lenders who are regulated within a recognised jurisdiction (principally the UK and Guernsey) or entering into credit and hire agreements and secured lending arrangements following reverse solicitation and/or where the consumer obtains local Jersey broker advice on the loan prior to entering into any agreement or arrangement. These discussions with the JFSC and Industry will continue throughout 2024 as Government looks to secure regulation of overseas lenders in a manner which is fair and proportionate to local lenders whilst ensuring adequate consumer choice and protections are in place.

## 2.7 Secondary Legislation

Question 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.



125. We received valuable feedback from respondents on the proposed pre-contractual requirements (**Figure 29**). The proposal to align with Guernsey and the UK on pre-contractual regulations was positively received. Respondents commented that further exemptions were needed as indicated at Questions 25 and 26 above to bring the proposed regime more in line with Guernsey and/or the UK.
126. Some respondents were of the view that a distinction should be drawn between those consumers who borrow against a main residence and those who borrow against investments. We heard that if Lombard lending is to be in scope, then it would be necessary to remove requirements for total cost of credit, APR, and instalment amounts etc, as it would not be possible to give information for revolving demand loan type arrangements, especially at a pre-contract stage.
127. We heard from Telecoms companies that they are already regulated for consumer protections and that much of what is proposed both for pre-contract and contractual requirements, would be duplicate regulation for this sector. Although Telecoms companies are not regulated for consumer credit, they are required to comply with consumer protections for billing and service arrangements and where credit for a mobile phone for example, is provided by way of a package that includes data service provision, conduct is regulated by the JCRA.



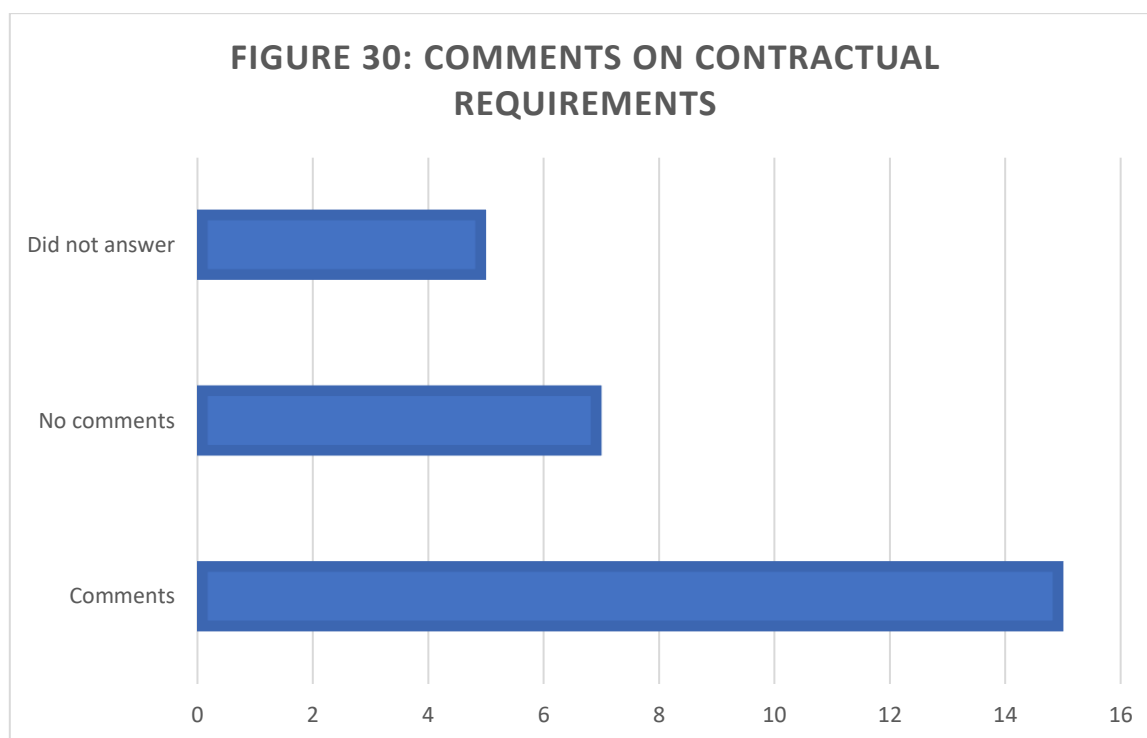
### OUR RESPONSE TO Q30

Most of the comments received related to concerns regarding pre-contractual requirements for commercial lending. As commercial lending will now be out of scope, we will proceed with our proposals to incorporate pre-contractual requirements for consumer credit.

As per the response to Q32 (see below), the Government has decided to not use secondary legislation to create conduct and prudential regulations other than with respect to unfair terms and debt collection. Instead, this will be created by the JFSC, principally via codes of practice.

We will promote alignment to Guernsey's regime where possible to enable interoperability for Industry between the jurisdictions. We will work further with the JFSC and Industry to develop the regulatory framework in this regard.

Question 31: Bearing in mind the JFSC will consult on these in detail later, please provide any comments you have on the proposed contractual requirements.



128. Of the 15 respondents who provided comments on the proposed contractual requirements, three agreed with the proposals without further comment (**Figure 30**). The remaining 12 respondents who commented largely agreed with the proposals on the basis the proposals predominantly align with Guernsey's contractual requirements.

129. There were general comments that the JFSC will need to be sufficiently resourced to regulate this sector and some respondents cautioned that adding extra regulation for lenders in the form

of affordability and vulnerability checks may drive up borrowing costs and/or cause some participants to stop lending.

130. In respect of the proposed vulnerability checks, we heard that:

- The checks should align with those required under the UK's Consumer Credit Act 1974 and consideration should be given to what information licensees are allowed to collect, how information should be stored, and the length of time information should be stored etc
- Implementation should sit with the firm to ensure suitable controls are in place. If regulation is too granular, there was concern that it may have unintentional consequences and create obstacles to credit being made available
- It was suggested that where a consumer is vulnerable an appropriate protection measure may be to require an independent lawyer to explain the terms of an agreement, or that a guarantee is put in place

131. With regards to affordability checks, we heard that:

- Checks should be more stringent where the borrower's security is the main residence
- For secured lending, there should be a requirement to stress test changes in interest rates unless the entire loan is at a fixed rate
- Stakeholders' expectations will need to be managed: affordability checks will not equate to binary decisions; responsible lending means reviewing each loan request on a case-by-case basis

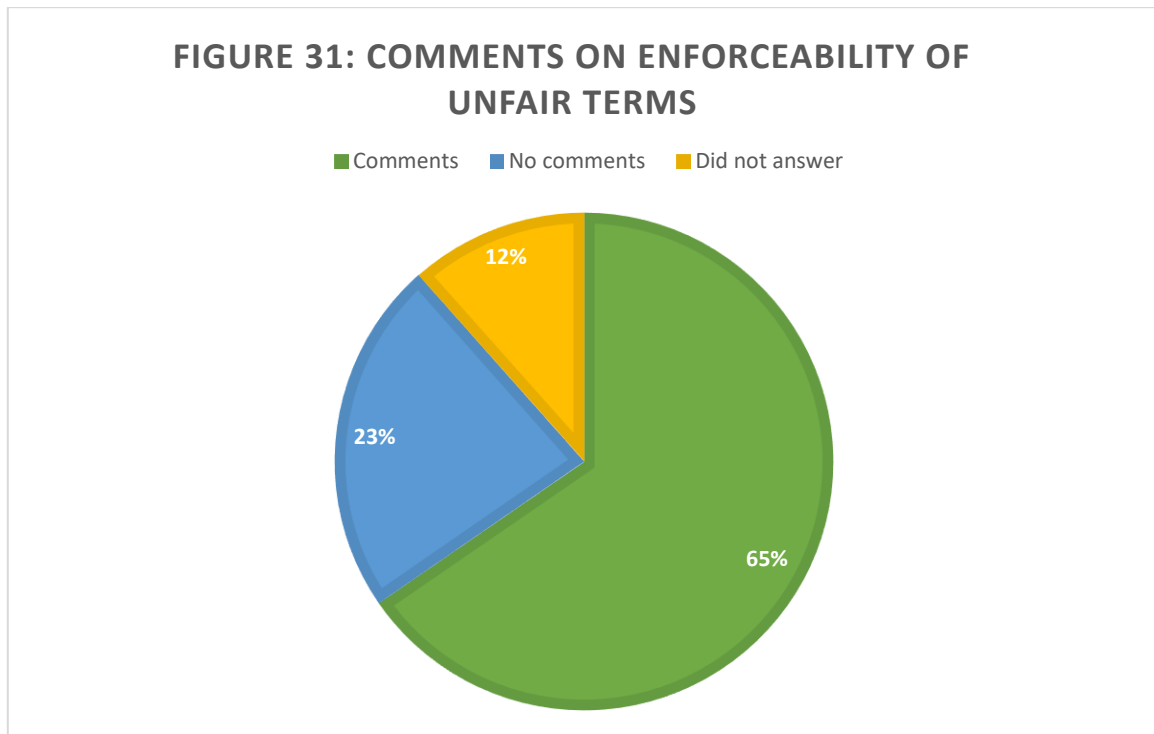
132. We also heard that the proposed cooling off period was too short. Some felt that Jersey's regime should align with that of the UK (i.e., 14 days) and others felt that it should align with Guernsey's regime (i.e., a seven-day period of reflection plus a 14-day cooling off period).

#### **OUR RESPONSE TO Q31**

As with the proposals for pre-contractual requirements most of the feedback received related to concerns regarding requirements for commercial lending. As commercial lending will now be out of scope the Government has decided not to use secondary legislation to create conduct and prudential regulations other than with respect to unfair terms and debt collection. Instead, this will be created by the JFSC, principally via codes of practice.

We will promote alignment to Guernsey's regime to ensure interoperability for Consumer Credit Firms between the jurisdictions. We will work further with the JFSC and Industry to develop the appropriate regulations in this regard.

Question 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, included in a regulated agreement or arrangement, may be unenforceable and/or mean interest cannot be charged on a regulated agreement or arrangement.



133. We received several comments on the proposed unfair terms and enforceability of such terms where they appear in a regulated agreement or arrangement (**Figure 31**).

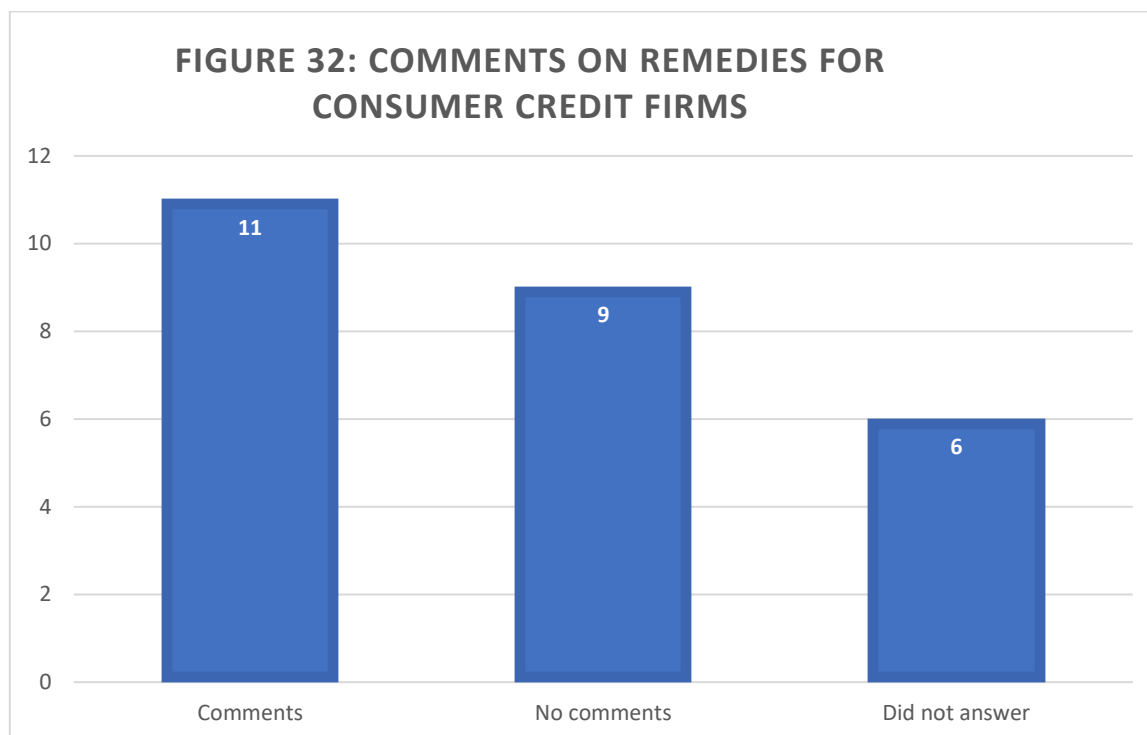
134. There was overwhelming support for the proposal to ensure the list of unfair terms is consistent with that used in Guernsey though respondents felt guidance will need to be clear, particularly regarding unregulated agreements and the stopping of monies due where the unfair term does not relate to interest rates/charges.

**OUR RESPONSE TO Q32**

We will promote alignment to Guernsey’s regime where possible to enable interoperability for Consumer Credit Firms between jurisdictions. We will work further with the JFSC and Industry to develop the regulatory framework in this regard.

## 2.8 Remedies & Breaches

Question 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.



135. Of the 11 respondents who provided comments (**Figure 31**), none disagreed with the proposals to introduce payment plans or the other remedies proposed in the Consultation Paper. Comments received sought additional clarification on what would amount to a payment plan, how flexible a payment plan could be, and to ensure that the debt collection code of practice was fit for adoption, particularly if micro-enterprises remain in scope of the proposed regime.

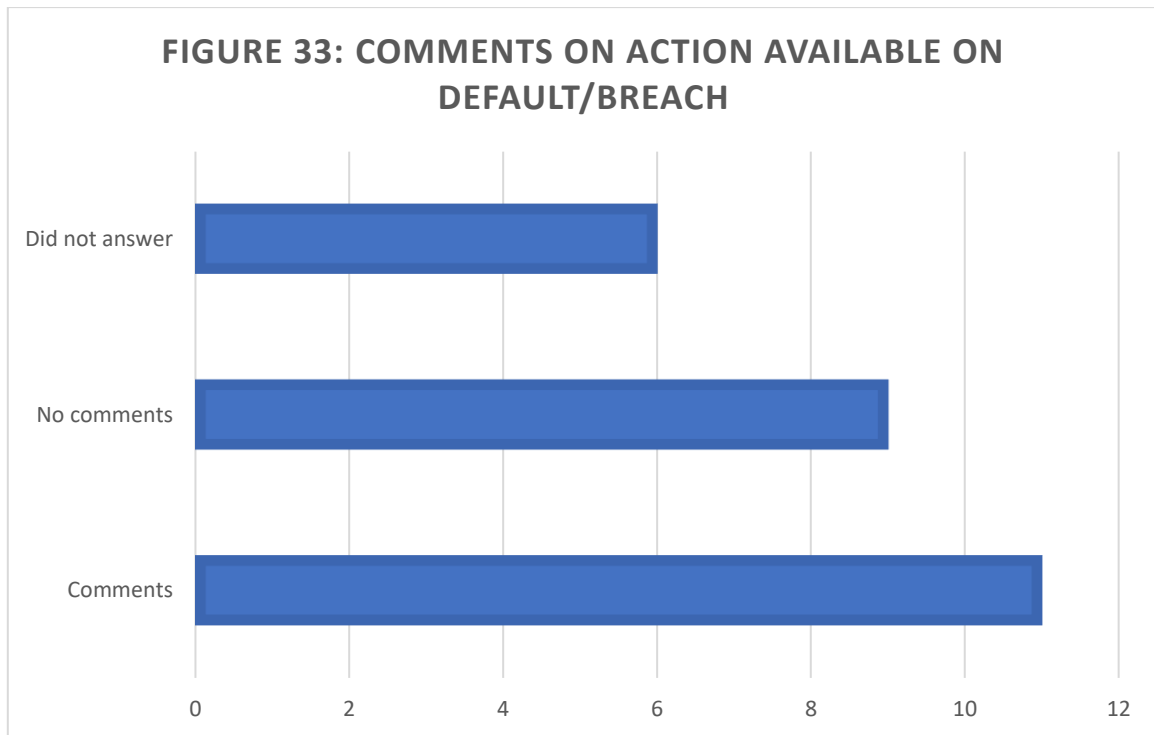
136. We heard that the banks that provide mortgage lending already comply with The Mortgage Charter [Mortgage Charter - GOV.UK \(www.gov.uk\)](http://www.gov.uk). Clarity was sought by those banks as to how The Mortgage Charter will interlink with the proposals for payment plans.

137. It was also suggested that where a consumer does not respond to requests from a lender to enter into a payment plan in the event of non-payment of a loan, that there should be a requirement on lenders not to take enforcement action until all “reasonable” efforts have been made.

### OUR RESPONSE TO Q33

We will promote alignment to Guernsey’s regime where possible to enable interoperability for Consumer Credit Firms between jurisdictions. We will work further with the JFSC and Industry to develop the regulatory framework in this regard.

Question 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.

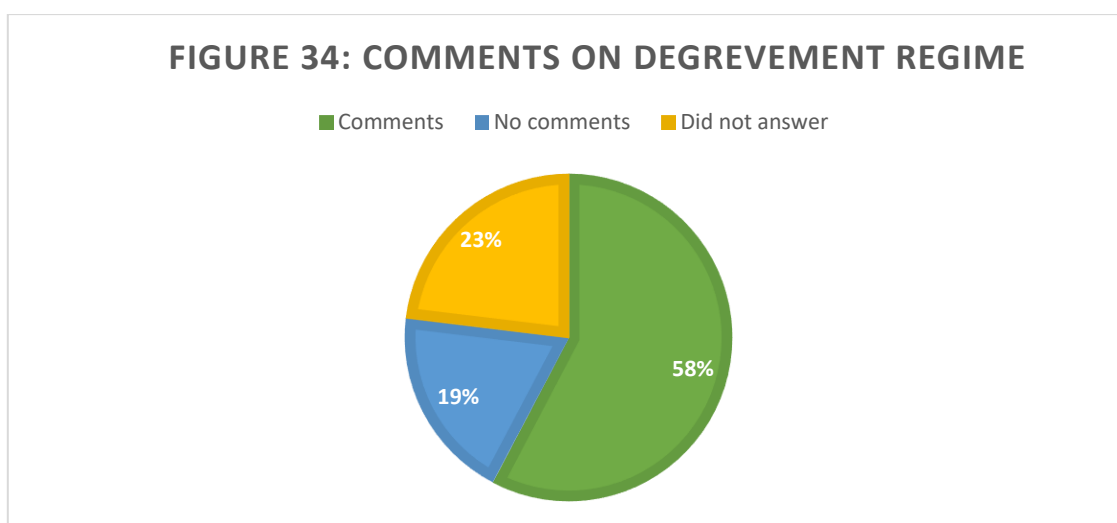


138. Fifteen respondents provided comments on the proposals relating to remedial action that can be taken by a consumer credit firm where a consumer has breached or defaulted on a regulated agreement or arrangement (**Figure 33**). All agreed with the proposals.

**OUR RESPONSE TO Q34**

Noting that Lombard lending will be out of scope, we will otherwise proceed with our proposals to develop secondary legislation for default or breach by a consumer. We will work closely with the JFSC and Industry in the development of the secondary legislation and codes of practice, again noting the desire to closely align to Guernsey’s regime where possible.

Question 35: Please provide any comments you have on the proposed further exemptions with respect to dégrèvement, including with regard to participation in the hearing where the new discretion may be exercised.



139. Fifteen respondents provided comments on the proposals regarding the dégrèvement regime (**Figure 34**). All but one respondent agreed the proposals.

140. We heard from the legal community that the proposals were welcomed, some commenting that the proposals should be extended beyond the consumer credit regime to the dégrèvement regime as a whole.

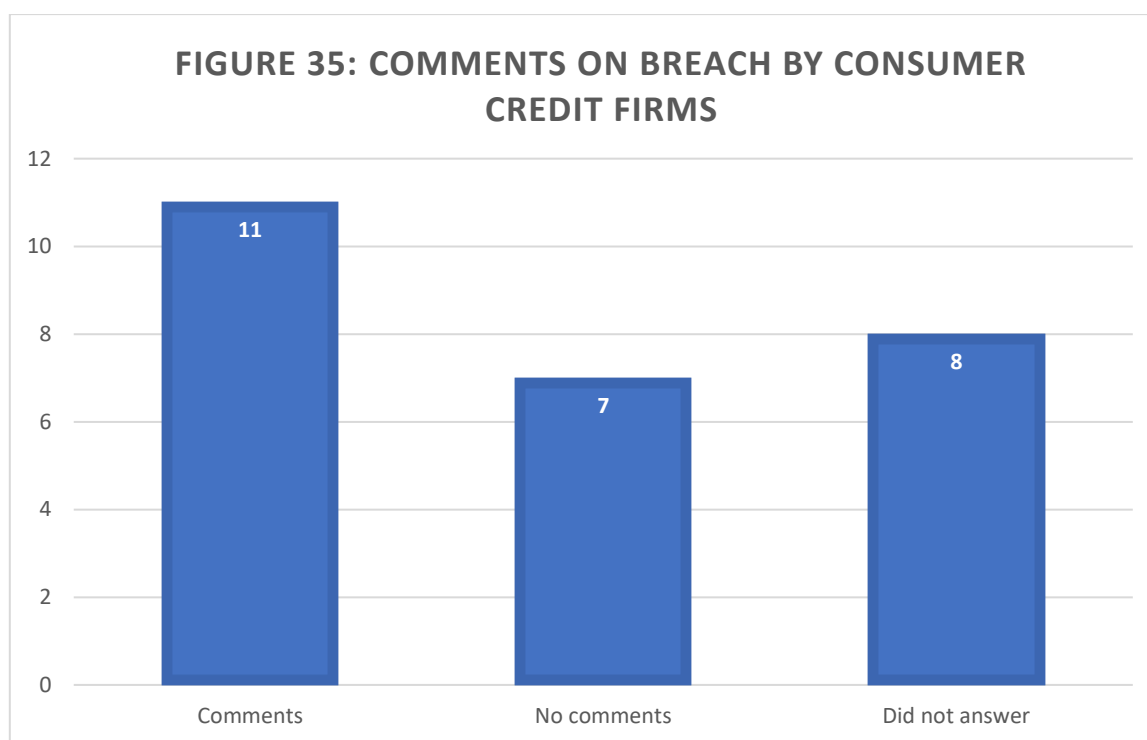
141. One responding lawyer felt the change to the dégrèvement regime will require a tenant après dégrèvement to sell a property if the Court believes this will result in a surplus which they must then give back to the debtor. The respondent felt this would be a substantial change and arguably conflicts with the purpose of the dégrèvement regime – that is to provide redress where the debtor is unable to pay their debt. That said, the Law Society of Jersey strongly supports the proposals making the following comments:

- The Royal Court should issue a practice direction in respect of the process to be followed.
- A Tenant should be able to enter into an agreement (potentially registered and agreed to by the Royal Court) in which the affected parties agree amongst themselves to the split of any surplus (thus potentially offsetting some of the Tenant's risk by agreement).
- As this is a default situation, expenses should be recoverable on an indemnity basis and not be qualified by reference to "reasonable" expenses.
- Interest/default interest should not be expressly captured in the drafting.

#### **OUR RESPONSE TO Q35**

The Government has considered the helpful feedback provided on the proposals. The Government intends to address the Law Society's comments, including by making provision so that it is possible either for the court to order that a property be sold by the tenant, or that an amount is paid by the agreement of the tenant and insolvent representing the surplus. The Government will work further with the Law Society and the Jersey branch ARIES Legal and Regulatory Technical Committee to ensure the wording is appropriate.

Question 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.



142. 11 respondents provided comments (**Figure 35**). Subject to any comments received regarding the placement of the proposed regime in the Financial Services Law as opposed to the Ombudsman Law or Consumer Protections Law (as set out in the feedback to Questions 1 and 2 above), most respondents had no further comments.

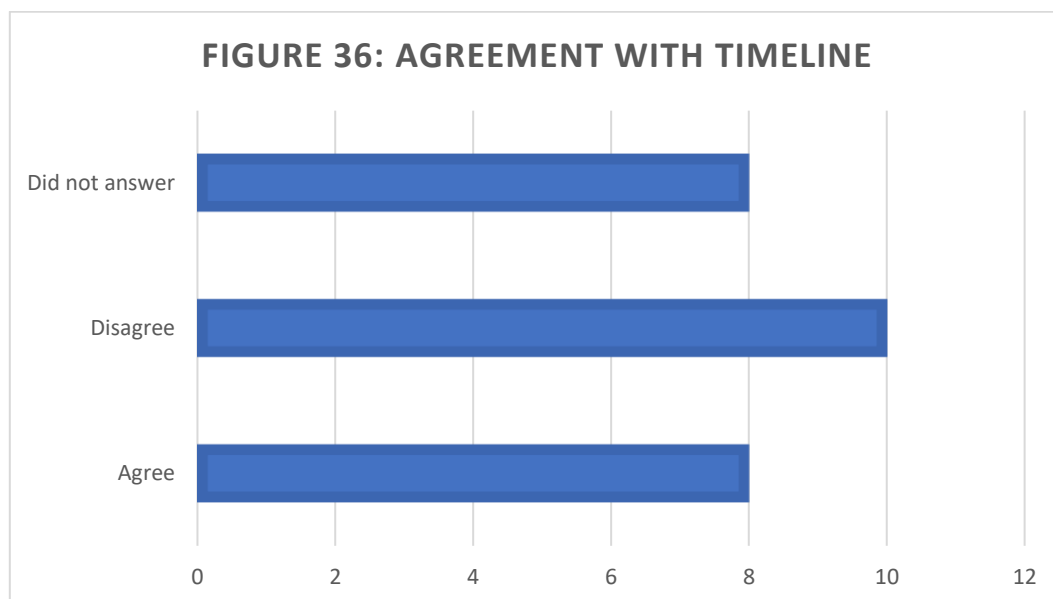
The comments that were received in response to Question 36 emphasised the need to be clear how matters for both consumers and credit firms will be resolved and which roles which organisations, for example, the JFSC, Trading Standards and CIFO will play. It was felt that detailed, multi-round consultation workshops with the relevant stakeholders will be essential to getting roles and responsibilities right.

#### **OUR RESPONSE TO Q36**

The Government will work closely with the JFSC, Trading Standards, CIFO and other key stakeholders to ensure the roles and responsibilities that each of these bodies will play in Jersey's Consumer Credit Regime are clearly articulated to consumers and Industry, including during the consultation process for secondary legislation and work with the JFSC to ensure this is clearly communicated, perhaps in guidance notes or other literature published to assist the interpretation of the draft Law (e.g., FAQs etc.).

## 2.9 Timeline

Question 37: Please provide any comments you have on the indicative timeline.



143. Of the eight (31%) respondents who agreed, three openly confirmed their agreement, the remaining five respondents said they had no comments (**Figure 36**).

144. Ten respondents actively disagreed with the proposed timeline on the basis that the legislation, codes and guidance must be settled before any transitional period commences. There was very strong support amongst this group for the transitional period to be extended from six months to twelve months. Three of the 13 respondents who provided comments agreed with the proposed timeline. The remainder of those agreeing said they had no comments.

### OUR RESPONSE TO Q37

In consideration of the feedback received, we have significantly extended the timeline for implementation of the consumer credit regime.

Furthermore, instead of carrying out multi-party workshops on policy areas that still require more detailed clarification (e.g. private lenders) after the primary law has been lodged, the Government has brought forward these workshops to take place prior to lodging the draft Law with the States Assembly. We will aim to lodge the draft law with the States Assembly towards the end of 2024 whilst spending the majority of 2024 and 2025 continuing to work with stakeholders to formulate and consult on the secondary legislation as needed before lodging. This includes working with Industry and the JFSC, Trading Standards, CIFO and other stakeholders on Regulations, Orders, Codes of Practice and Guidance Notes.

If approved by the States Assembly, it is anticipated that the draft Law will not be in force until at least 2026 to ensure there is a 12-month transitional period between the draft Law and secondary legislation being settled and the new regime coming into force.



## 2.10 Overall proposals

Question 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.

145. As indicated in **Figure 2** in the executive summary above, 64% of respondents agreed, in principle, with the proposals to regulate consumer credit. Some 25% of respondents disagreed, and 11% did not answer the question.

146. Most respondents who agreed, did so on the basis that the definition of “consumer” should be amended, and exemptions are extended in line with the suggestions made by respondents.

147. The 25% of respondents who disagreed predominantly, but not exclusively, derived from the legal community. We heard that whilst these respondents supported the concept of better consumer protections, it was felt there was insufficient data to suggest the level of regulation that was needed. We also heard the proposed regime would risk Jersey’s reputation as a place to do business and would negatively affect the local lending market. These respondents also felt that other organisations, such as Trading Standards and CIFO would be better resourced than the JFSC to regulate consumer credit.

### OUR RESPONSE TO Q38

Based on the feedback received, we will proceed to regulate consumer credit in Jersey. We will make amendments to the proposals as set out in this Response Paper, aim to lodge the amends to the draft Law towards the end of 2024, and will continue to engage with the JFSC, Industry and key stakeholders to develop the secondary legislation as indicated in the response to Q24 above.

### 3 Consumer Feedback

148. In addition to the 38 questions asked in the Consultation Paper, Government sought the views of borrowers (“**Consumers**”) via a short survey on the Government’s website. Three questions were asked of Consumers. These three questions are listed below, together with the responses received from Consumers and Government’s own responses to this Consumer feedback.

149. A total of seven Consumers answered questions on-line, albeit not all seven answered all three questions.

#### 3.1 Scope

##### Consumer Question 1: Do you agree with the scope of activities proposed to be regulated?

150. Of the six respondents who provided an answer to this question, five respondents agreed with the scope of activities proposed to be regulated. One respondent in agreement commented that it was important that Jersey residents have access to mortgage and credit card providers from the UK to enable wider market choice and encourage a more competitive market that will benefit consumers of these products.

151. One respondent disagreed but no rationale was given for the disagreement.

#### OUR RESPONSE TO CQ1

Noting the intention to align Jersey’s consumer credit regime where appropriate with Guernsey’s regime, we will proceed to regulate the activities proposed with amendments to the definition of “consumer” so that the law will only apply to personal/retail lending. Protections will not now be extended to “micro-enterprises” (as defined in the Consultation Paper).

#### 3.2 Exemptions

##### Consumer Question 2: Do you agree with the proposed exemptions to the legislation?

152. Of the six respondents who provided an answer to this question, two agreed with the proposed exemptions, two disagreed and two were not sure.

153. Two respondents provided comments. They both felt buy-to-let lending should be included in scope and one respondent also felt loans from lawyers should not be exempted.

#### OUR RESPONSE TO CQ2

Save for extending the “essential services” exemption to Telecoms Cos and excluding Lombard lending, we will proceed with the proposed exemptions. However, we will look closely at any further exemptions required by way of secondary legislation, working with Industry and the JFSC to formulate and consult on the necessary framework.

### 3.3 Micro-enterprises

Consumer Question 3: Do you agree that the consumer credit protections should apply to loans to micro-enterprises up to £30,000, and that loans to micro-enterprises above that figure should be regarded as business loans?

154. Three respondents felt consumer credit protections should apply to micro-enterprises and three disagreed.

155. Only two respondents provided comments. One respondent commented that micro-enterprises should be excluded to minimise administration and bureaucracy. Another respondent felt the limit was not high enough and should be extended to £300,000.

#### OUR RESPONSE TO CQ3

Noting the responses received from consumers, together with the responses received from Industry (set out in the feedback to Questions 5-9 of Section 2 above), we will be removing “micro-enterprises” from scope. The consumer credit regime will therefore only apply to personal/retail lending. This means protection for individuals acting wholly or mainly outside of that individual’s trade, business or profession.

## 4 Feedback from Drop-In Sessions

156. Further feedback was received from the drop-in sessions held at the Town Library. Although the feedback provided by members of the public who attended the sessions was not provided directly in answer to the questions posed, general comments and statements were made. The themes that ran across the feedback received during the drop-in sessions were:

- An agreement in principle with the proposal to bring in consumer protections but disagreement placing of the proposed regime in the Financial Services Law
- Regulation of lending to micro-enterprises would have a significant impact on credit available to small businesses. Regulation of lending to micro-enterprises should be excluded from the regime.
- There should be a phased approach to bringing in the legislation.

### **OUR RESPONSE TO DROP-INS**

We have dealt with the feedback received from the drop-in sessions at Questions 1, 2, 5-9,24 and 37 of Section 2 above. Please refer to these for the outcomes.

## 5 Next Steps

157. We are very grateful for the valuable and constructive remarks we have had from all stakeholders on this important and complex topic. The Government would like to take this opportunity to thank all those who have engaged in the consultation for their feedback.
158. The feedback demonstrates that the policy objectives for the consumer credit regime are supported. Having considered all views, we still intend that the regime will fall within the JFSC's remit and that the draft Law will be how a consumer credit regime is brought within the law in Jersey.
159. It has always been the intention that roles of Trading Standards and CIFO in addressing customer redress will complement the JFSC's regulatory role. We will expand on this in greater detail in 2024.
160. It is envisaged that Trading Standards will have an important role in helping consumers to address breaches of regulations restricting the use of unfair terms whilst CIFO will continue to be able to consider complaints, considering the new regulations, having the power to award compensation and remedies, where it considers these to be appropriate.
161. The JFSC's role will be to develop and maintain its regulations, authorise firms and their owners, directors and key persons, and supervise their conduct against the Law and relevant regulations.
162. The purpose of the consumer credit regime is to protect consumers from harm. However, we heard that "consumer" should be redefined to provide protections for retail/personal lending only. We heard that we should give HNWI's an option to exclude themselves from the protections of the regime and micro-enterprises should be removed to exclude protections to small businesses that might be borrowing.
163. The legislation and regulations will be amended to reflect the comments received, as set out in this Response Paper. However, if after the consumer credit regime comes into force, we see bad actors causing harm to be suffered by micro-enterprises, the Government reserves its position with regards to amending the draft Law to bring micro-enterprises back into scope of the protections.
164. We also heard that some further work is needed on exemptions to mitigate the risk of unintended consequences, including in relation to familial lending, lending between connected parties, inter-company and corporate lending, and lending between trustees and beneficiaries in the context of international finance work. Amongst other things, we also heard that private lenders should be exempt from some of the supervision requirements that may be applied to larger institutional lenders. We have also heard that telecoms companies should be included in the essential services exemption. As set out earlier, micro-enterprises are to be removed from scope of the proposed regime, we will provide an exemption for Lombard lending and telecoms companies and work with the JFSC to address the concerns of Private Lenders.
165. The technical feedback received from the legal, lending and telecoms communities has been particularly helpful, and we hope that by amending the definition of "consumer" and simplifying the activities to be regulated we will remove the need for several of the additional exemptions suggested. Nevertheless, we will work closely with Industry to ensure that unintended

consequences are avoided and to introduce any further exemptions needed to reflect the intentions of the regime – better/proportionate protection of the retail consumer from harm.

166. The feedback received indicated that the transitional period should be extended from six months to 12 months. We have listened to this feedback and will be extending the transitional period accordingly.
167. We will also continue to work closely with the Law Society and ARIES to ensure that the changes to the dégrèvement regime are appropriate to achieve the desired outcomes.
168. In addition, many respondents have offered more input and support to assist development of the consumer credit regime. The Government welcomes the support offered by Industry and as we work through the technical feedback and continue to formulate the secondary legislation, the Government and/or the JFSC, will look to establish further working groups focussing on the proposed secondary law and Codes of Practice and guidance.
169. We will still endeavour to lodge the draft Law, with amendments, before the States Assembly though much later in 2024. Furthermore, taking on board our commitments in respect of the transitional period and desire for continued Industry engagement, we have significantly revised the implementation timeline.
170. We envisage preparation of the secondary legislation will be conducted jointly with the JFSC and now take place in 2024 and 2025, along with JFSC consultation(s) on its regulations, including Codes of Practice.
171. Once the legislation comes into force by way of a Commencement Order, we envisage a 12-month transitional period before regulation is formally “switched on” and goes live.

## 6 Appendix: List of identifiable respondents

No.	Respondent Name
1.	Barclays Bank plc, Jersey Branch
2.	Carey Olsen
3.	Close Finance
4.	Collas Crill
5.	HSBC Bank plc, Jersey Branch
6.	Individual
7.	Investec Asset Finance
8.	Jersey Association of Trust Companies (“JATCo”)
9.	Jersey Bankers Association (“JBA”)
10.	Jersey Finance Limited (“JFL”)
11.	JT Global
12.	Ogier
13.	The Royal Bank of Scotland International Limited
14.	Royal Bank of Canada (Channel Islands) Limited
15.	RBC Trust Company (Jersey) Limited
16.	Skipton International
17.	Sure
18.	The Law Society of Jersey
19.	Voisin Law