

General Information	
Ministerial Decision Type	Miscellaneous
Report Title	Consultation Paper: Consultation on the Consumer Credit Regime:
Minister	Chief Minister
Signatory	Select Signatory.
Lead Department	Economy
Lead Directorate	Financial Services (Economy)
Ministerial Decision Summary: Public or Absolutely/Qualified Exempt	Public Select if more than one Absolutely/Qualified Exemption.
Date decision made if different to date 'Ministerial Decision Summary' signed.	Select date.
Report and Supplemental Report Details	
Report Author	Associate Director of Financial Services
Date of Report	Select Date of Report.
Supplementary Report Title <i>(If applicable)</i>	Insert Supplemental Report Title.
Supplementary Report Author <i>(If applicable)</i>	Insert Official Title Only.
Date of Supplementary Report <i>(If applicable)</i>	Select Date of Supplemental Report.
Ministerial Decision Report: Public or Absolutely/Qualified Exempt	Select Public or Absolutely/Qualified Exempt. Select if more than one Absolutely/Qualified Exemption.
Relevant Case/Application/URN <i>(Only complete if making a decision related to an appeal/case/application)</i>	Insert Relevant Case/Application.
Relevant Proposition Number <i>(Only complete if presenting Comments or if lodging an Amendment)</i>	Insert P. number.
Relevant Scrutiny Report <i>(Only complete if presenting a ministerial response)</i>	Insert S.R. number.
Associated Law(s) and/or Subordinate Legislation	Financial Services (Jersey) Law 1998
Action required if recommendation agreed	Department to take necessary action.

Resource Implications	There are no new financial and/or manpower implications.
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Introduction

In February 2022, the Minister for Financial Services requested draft legislation be prepared to provide a legislative regime for consumer credit and ancillary activities. A decision is required from the Minister to approve the consultation paper that sets out the proposed legal framework and legislative amends to the Financial Services (Jersey) Law 1998 which will bring about the requested regime.

Recommendation

Other

That the consultation paper setting out the proposed consumer credit regime is approved and published.

Detail

The consultation paper sets out the proposed amends to the Financial Services (Jersey) Law 1998 (“**FSJL**”) that will bring about regulation of those engaged in lending and business ancillary to lending that involves consumers (“**Consumer Credit Firms**”). The regulation will be overseen by the Jersey Financial Services Commission (“**JFSC**”) and a minimum set of governance requirements will need to be met before Consumer Credit Firms will be eligible for a licence.

Businesses that are already regulated by the JFSC are required to adhere to a set of core principles. It is proposed that these principles should be applicable to Consumer Credit Firms and tailored as necessary for the type of business being conducted. The core principles include:

- Integrity
- Due skill, care and diligence
- Good governance
- Treat customers fairly
- Be clear, fair and not misleading
- Suitability
- Manage conflicts
- Adequate protection
- Open and co-operative with regulators.

The proposed regime has been prepared with reference to the UK and Guernsey’s consumer credit regimes to ensure continued service provision for consumers and to avoid unnecessary operational friction for Consumer Credit Firms.

Those who will benefit from the proposed regime will be individuals, irrespective of their personal wealth or circumstances, provided they are acting wholly or mainly outside of their business, trade or profession and micro-enterprises (the latter up to a certain credit value, currently £30,000).

The proposed regime is wide ranging, covering cash loans and any other form of financial accommodation. It will cover consumer credit and hire agreements and secured lending arrangements.

In addition to lending, the types of activities that will be caught by the proposed regime are: Advising on, administering, and arranging regulated agreements and arrangements
Credit broking in respect of regulated agreements and arrangements
Debt related activities, such as debt adjusting, debt counselling, debt collecting and debt administration.

Private lending will be in scope of the regime if it is being done by way of business. However, it is proposed to consult private lenders to ascertain the appropriate characteristics

of private lending and whether any exemptions should apply, the detail of which will be consulted on later by the JFSC.

It is proposed that certain types of specified business will be exempt from the regime. In addition, it is proposed that further exemptions be added by Ministerial Order prior to implementation. In many cases, these exemptions will reflect the position in other jurisdictions and are intended to avoid unnecessary overlap with regulatory regimes. Any exemptions to be enacted by orders will be consulted upon by the JFSC later.

It is also anticipated that there will be circumstances whereby the JFSC tailors the proposed regime to reflect the risks posed by certain activities whilst maintaining customer choice.

These include:

- Overseas lenders not registered in Jersey and with no operations in Jersey
- Lending by agents of Jersey registered lenders
- Lending by overseas lenders not registered in Jersey that have agents in Jersey.

If the proposed regime is approved, there is a prohibition under the FSJL meaning that Consumer Credit Firms that carry on unauthorised business is punishable by imprisonment for a term of not more than 7 years, or a fine, or both.

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

It is also envisaged there will be a list of unfair contractual terms set out in secondary legislation made under the proposed amends to the FSJL. If such terms are included in regulated agreements and arrangements, then it is proposed they be deemed unenforceable and/or interest may not be chargeable on the sum borrowed. The JFSC will consult on the list of unfair terms later, but they are anticipated to be like that recently published by the Guernsey Financial Services Commission following the enactment of its own consumer credit regime in the Lending, Credit and Finance (Bailiwick of Guernsey) Law, 2022.

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

- Unenforceability of unfair terms/and or interest
- Redress via Channel Islands Financial Ombudsman
- Redress vial legal proceedings – Trading Standards will be involved where there is a breach of the proposed regime where criminal sanctions apply.

The 2023 Ministerial Plan commits to lodge legislation for a consumer credit regime by December 2023. If the proposed legislation is approved by the States Assembly, it is anticipated it will come into full regulatory effect (including secondary legislation) by the end of 2024.

It is expected the new regulatory regime will apply to all new regulated agreements and arrangements following enactment of the legislation. It is proposed there be a further transitional period within which all pre-existing agreements and arrangements will need to become regulated agreements and arrangements, compliant with the FSJL.

It is recommended that the consultation paper is published as soon as possible before the summer, to enable feedback to be received on the proposed regime to meet the above timetable.

