



Consumer Credit Regime: Consultation on proposed changes to draft Financial Services (Jersey) Amendment Law 202-



Introduction

Following [the initial consultation on the proposed draft Law in the summer of 2023](#), and a period of direct engagement with industry throughout 2024, the proposals for a new consumer credit regime have undergone significant change. Government seeks to achieve a proportionate regime that provides consumer protections without over-burdening businesses.

A link to the previous consultation on the proposed consumer credit regime can be found here [Consumer Credit Regime](#).

This consultation paper should be read alongside the proposed draft law: [Draft Financial Services \(Jersey\) Amendment Law 202-](#)
[Draft Financial Services \(Jersey\) Amendment Law 202- Explanatory Note](#)

Main changes

A number of changes have been made in response to the previous consultation. The key changes are as follows.

By way of reminder, the proposals envisage supervision by the Jersey Financial Services Commission (“JFSC”) of those regulated persons carrying out consumer credit business. Consumer credit business is defined within the scope of the proposed regulated activities. However, certain activities which might otherwise fall within scope of the regime are in fact the subject of specific exemptions, as set out below.

The definition of “consumer” has been refined to provide protections for retail/personal lending only: all lending to small business/micro-enterprise has been removed. High-net-worth individuals (HNWIs) have been given the option as to whether or not to exclude themselves from the protections of the regime.

The definition of “consumer credit agreement” has also been refined to clarify that only unsecured credit is caught.

Regulated activities

The activities that will be in scope of the regulatory regime are as follows:

- 1) Entering into regulated agreements and arrangements
- 2) Exercising, performing or obtaining rights or duties under regulated agreements or arrangements
- 3) Advising on regulated agreements and arrangements
- 4) Credit broking, inclusive of:
 - a) Introducing parties in respect of regulated agreements and arrangements
 - b) Presenting or offering regulated agreements or arrangements
 - c) Assisting another person to enter into regulated agreements or arrangements
 - d) Entering into regulated agreements or arrangements on behalf of a credit provider
- 5) Debt adjusting, inclusive of:
 - a) Negotiating with a credit provider on behalf of a borrower
 - b) Taking over payments to discharge a debt on behalf of a borrower
 - c) Liquidation of a debt on behalf of a borrower
- 6) Debt counselling
- 7) Debt administration, inclusive of:
 - a) Performance of duties on behalf of a lender/borrower (excluding debt collection)
 - b) Exercising rights on behalf of a lender/owner (excluding debt collection).

Pure debt collection is no longer in the scope of the draft Law. Instead, separate Debt Collection Regulations will be issued under Article 31A of the draft Law (to be consulted upon later). Trading Standards and the Channel Islands Financial Ombudsman will have responsibility to ensure these are complied with.

The activities of administration and arranging have been wrapped up into credit broking.

Those who carry out, by way of business, the activities set out at 1-7 above will be considered to be consumer credit businesses for the purposes of the draft Law and will be required to register with the JFSC, unless specifically exempted from doing so.

Though further consultation will take place, it is anticipated that the classes of business (once amendments are made to the Financial Services (Financial Service Business) (Jersey) (Order) 2009) for which regulated entities will be supervised will be along the following lines:

Class Type	Class Category
1. Credit Provider	A. Residential Mortgage Provider License B. Unsecured Credit Provider License C. Hire Purchase Provider License
2. Advising	A. Residential Mortgage Advisor License B. Consumer Credit Advisor License
3. Credit Broking	A. Mortgage Broker License B. Consumer Credit Broker License
4. Debt Management	A. Debt Adjuster License B. Debt Counsellor License C. Debt Administrator License

Exemptions

The proposed draft Law sets out the following exemptions to the consumer credit regime:

- 1) Advice given in newspapers (generic advice)
- 2) Activities of professional trustees, members of the legal profession and liquidators
- 3) Advising in the course of a profession or business (other than financial services business)
- 4) Agreements for the supply of essential services and telecommunications services
- 5) Activities of certain overseas persons (UK and Guernsey and/or reverse solicitation)
- 6) Activities in relation to HNWI (by way of an opt-out and for which the definition of HNWI is set out in the draft Law)
- 7) Activities of private lenders (subject to lending criteria set out in the draft Law being met)

For clarity, for the purposes of the proposed exemption at 7) above “private lender” means a lender or owner who provides a secured mortgage or credit over £30,000 to non-family members, and the lender/owner’s lending totals £5m or less and is given to 10 or fewer consumers. Who constitutes a “family member” is described in the draft Law.

In addition, exemptions for Buy-to-Let lending and Lombard Lending have been removed. At this point in time Government continues with its policy intention that the scope of the consumer credit regime in relation to secured lending is limited to that which that which is secured on a consumer’s primary residential property in Jersey. Save for pawnbroking (which is being dealt with separately) it is not intended, to capture any other form of secured lending. Government will

look to widen what is considered to be secured lending if it becomes apparent that harm is being sustained by consumers in this sphere.

Further exemptions to the regime, will be provided for by way of an accompanying exemptions order, that will be the subject of specific consultation. However, by way of example, the further exemptions are expected to include:

- 1) Charities (e.g., which focus on debt management)
- 2) Certain activities of credit unions that offer a lower rate of lending than other typical lending institutions
- 3) Activities for which no fee is paid, no commission is received, no charges are levied, and no interest is charged, which is intended to capture Buy-Now-Pay-Later (“BNPL”), store credit, gym and club memberships etc.
- 4) Hiring or leasing agreements where such agreements are not hire purchase agreements or other arrangements to purchase goods
- 5) Credit provided in relation to insurance
- 6) Appointed retailers and/or motor traders who provide credit facilities through a single credit provider subject to a written agreement with that credit provider for goods and services offered by that retailer
- 7) Loans to employees
- 8) Loans to directors, partners, shareholders or beneficial owners

Those who have reviewed the previous consultation and response paper will note that the original intention was to include BNPL loans in the scope of the consumer credit regime so that they would become regulated loans.

The decision to include them had been made on the basis that the UK would soon be bringing BNPL loans into the scope of the UK regime. However, work on this has not progressed and therefore to avoid a disparity between the regimes, the Government has decided to mirror the current position in the UK and Guernsey and exempt them from scope (hence their inclusion in the exemption order).

If, and when, the position changes in the UK and/or Guernsey, to ensure parity across the regimes and access to products, Government will consider including BNPL within scope of the regime.

Unfair Terms

Although some activities will be exempted from JFSC supervision (as set out above), a restriction on Unfair Terms will still apply irrespective of whether an activity is regulated under the proposed draft Law. The “Unfair Terms Regulations” will be issued under Article 31A of the draft Law, thereby creating a two-tier approach.

This two-tier approach enables Government to set requirements aimed at preventing the inclusion of unfair terms in consumer credit agreements and arrangements around annual percentage rates,

high commission, cooling off periods etc. and which promote a focus on transparency and fairness principles. The Unfair Terms Regulations will act as a more targeted alternative to traditional codes of practice requirements that would otherwise be supervised by the JFSC.

Trading Standards and the Channel Islands Financial Ombudsman will have responsibility for ensuring the Unfair Terms Regulations are complied with. The Unfair Terms Regulations will closely follow those applicable in Guernsey and the UK, though additional unfair terms relating to Annual Percentage Rates (APR) and total cost of credit will be also included in Jersey's Unfair Terms Regulations, being the most appropriate legislative vehicle for Jersey. It is anticipated these additional unfair terms may relate to:

- Total cost of credit (i.e. a lender must provide total cost of credit)
- Indicative interest rate(s) (where a lender cannot provide a definitive APR in an advert, it must provide an indicative interest rate(s))

The Unfair Terms Regulations will be supported by a Notice, issued by Government, setting out the formula for calculating APR and total cost of credit, both of which will align with the formula used in the UK and Guernsey, (which is tried, tested and familiar to industry and consumers).

Further consultation will take place on the Unfair Terms Regulation and Notice in due course and for the avoidance of doubt a draft is not included with this consultation.

Consequential amendments resulting from the draft Law

Consequential amendments will be made to the *Loi (1880) sur la propriété foncière* ("1880 Law") to amend the dégrèvement procedure so that it reflects the policy intent behind the consumer credit regime and brings it more in line with similar procedures in Guernsey and the UK.

The proposals will ensure that a reasonable price is obtained for the sale of a property that is the subject of dégrèvement procedure, plus the return of any surplus to the borrower (rather than retention by the primary creditor) once secondary creditors have been satisfied.

The proposals put forward in the consultation were supported by stakeholders, with only a few minor technical amendments suggested.

The *Loi (1884) sur le prêt sur gages* ("Pawnbroking Law") will be repealed and, pawnbroking will become a regulated activity supervised by the JFSC. Provision has been made for this in the draft Law. However, as this is a new type of activity for the JFSC to supervise it may take longer to prepare the necessary codes of practice and therefore given there are currently no pawnbrokers in Jersey, provision has been made to bring pawnbroking into the purview of the JFSC later.

Responding to this consultation

We would like to hear any comments you may have on the revised draft Law for the consumer credit regime.

If you have any comments you would like to submit, please send them to economy@gov.je referenced “Consumer Credit Regime Consultation 2” in the subject line.

The consultation on the revised draft Law will be open for a period of 4 weeks. The consultation period commences on 14 November 2024 and will finish on Friday December 2024.

Subject to comments received from the consultation, it is intended the draft Law will be lodged with the States Assembly by the end of 2024, so that the draft Law will be debated in the first quarter of 2025.

Parties who will be caught by the consumer credit regime

In particular, we would like to hear from any motor traders or retailers that offer credit to consumers, or non-bank and private lenders who might fall outside of the proposed exemption and thus who will be caught by the consumer credit regime, as we would like to engage with you directly.

Please contact economy@gov.je quoting “Consumer Credit Regime Consultation 2” if you think you may fall into any of these categories.