



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



On 13 November 2024, the Government of Jersey (“**Government**”) published a second consultation paper on the draft Financial Services (Jersey) Amendment Law 202- (“**draft law**”) amending the Financial Services (Jersey) Law 1998 (“**Financial Services Law**”) introducing a consumer credit regime (“**Consultation**”). The Consultation was open for four weeks from Friday 14 November 2024 to Friday 13 December 2024.

The purpose of the Consultation was to gather views on the amendments made to the draft law following the initial consultation that took place in the Summer of 2023 (“**Previous Consultation**”). No specific questions were asked of respondents, but open comments were sought.

Overview of the Consultation responses:

A total of 16 formal responses were received from retail banks, non-bank lenders, lawyers, Citizen’s Advice, the Channel Islands Financial Ombudsman, several law firms, motor traders, retailers, Jersey Finance Limited, Jersey Association of Trust Companies (“**JATCo**”) and an individual. Government has also held conversations with several other respondents including law firms and non-bank lenders. Government would like to take this opportunity to thank all those who engaged with the consultation for their invaluable input.

Overall, respondents were positively supportive of the pragmatic approach taken by Government to the draft Law including the proposed approach for Unfair Terms and Debt Collection Regulations, noting that further consultation will take place on these items of secondary legislation. However, one respondent felt that the more pragmatic legislative framework may restrict new lending as retail banks might be risk averse to the two-tier approach.

Several minor technical drafting comments were received on the draft Law, for example:

- the definitions of “consumer credit agreement” and “secured lending arrangement” where it was suggested these could be made clearer in light of changes made
- “rights and duties” in Schedule 1A, Part 2, Article 3 might read “rights and/or duties” as only rights (and not duties) are transferred with assignment but with novation, both rights and duties are transferred
- whether providing for the values setting the criteria as to who can be a high-net-worth-individual ought to be capable of being amended by way of regulations or order

We are grateful for all the technical drafting comments received. Where necessary we have engaged directly with those respondents who have suggested drafting comments to address any concerns raised and/or develop the technical drafting further.

In addition to the drafting comments made, a few key topics remained of interest to respondents. These primarily related to clarity around some of the regulated activities under credit broking such as preparation, offering and assisting, plus exemptions including private lenders, high net worth individuals, exemptions for trustees, insurance intermediaries, potential exemptions for motor traders and dégrèvement. Requests were also made for an indication of the current timeline for implementation. We have set out the comments received on these topics in more detail below, together with the Government’s response where appropriate and proposed next steps.

Summary of feedback

Activities

Feedback provided indicated that it would be of assistance if further clarity could be provided on what is meant by “presenting or offering” and “assisting” which appear as activities under “credit broking”. Government acknowledges that more detailed guidance as to what constitutes each of these activities is needed. However, because the detail of the activity is nuanced, it is not appropriate to provide this clarity in the draft Law. However, more granular detail as to what constitutes these, and other activities, will be provided in the report accompanying the draft Law together with some FAQs that will be published on a designated consumer credit page to be launched by Government.

Private lenders

It was felt by one respondent the thresholds categorising a private lender were low. However, the figures in the draft Law were the result of close consultation with stakeholders in 2024 and thus Government does not propose to alter these. That said, it should be noted that if the thresholds do need to be changed in the future for any reason, it is possible to do so by way of Ministerial Order under Article 4(1)(b) of the Financial Services Law.

It was indicated greater clarity could be provided as to the family and connected persons exemption. This has been noted, and Government will clarify this exemption further.

High net worth individuals

Clarification was sought on whether the income and assets related to worldwide income and assets or those arising in Jersey. For the avoidance of doubt, the figures setting the thresholds for high-net-worth individuals are the same as those in the UK and Guernsey and were included following close consultation with key stakeholders in 2024. The net income and assets are to be calculated in accordance with those in the UK, i.e. on a worldwide basis. This will be clarified in the draft Law.

Should the value of the net income and assets need to change at any given point in the future, they may be altered by way of Order under Article 4(1)(b) of the Financial Services (Jersey) Law 1998.

Trustees

The exemption as provided for in the draft Law in the Consultation was not considered to be wide enough to protect Jersey’s private wealth industry. The exemption as drafted only applied to regulated Trust Company Business and not Private Trust Companies or non-professional trustees. It was also noted that foundations were not exempted. Furthermore, respondents felt it was unclear on whether a trustee as defined would need to obtain legal advice on whether it and the activities being carried out are in scope of the draft Law, thus causing unnecessary cost and delays to trustees carrying out their day-to-day business. It is not Government’s intention to inadvertently capture non-consumer focussed activities. As such, we will work with industry, including JATCo, to make further amendments to the draft Law to ensure all relevant persons are exempted from consumer credit business where they are not soliciting or holding themselves out as providers of consumer credit business.

Insurance intermediaries

It has always been the intention of Government (as indicated in both the Previous Consultation and this Consultation) to ensure that insurance contracts are not captured within the consumer credit regime. This is because insurance is already well regulated in Jersey by the Financial Services Commission (“**JFSC**”), and to add additional regulation would result in extra costs being passed on to the consumer with no real benefit.

Engagement with the insurance sector has taken place earlier than anticipated meaning Government will be able to bring forward its work and include an exemption for insurance intermediaries in the draft Law as opposed to dealing with it in a proposed exemptions order.

Motor traders

Several comments were raised regarding the proposed exemptions for motor traders. These included, but are not limited to, the following:

- whether the proposed exemption should apply irrespective of whether there is a single credit provider or a panel of credit providers
- what the scope of this proposed exemption is to be and whether it would apply to both referral arrangements and financing available to customers of the retailer via a “behind the scenes” lender
- whether the exemption for motor traders using a single credit provider applies even if commission is earned

Government has already indicated an intention to closely align the regime with the position in Guernsey generally, and in respect of any proposed exemption for motor traders, to ensure parity between the two jurisdictions and to remove any operational challenges that may otherwise arise. The comments made by respondents are important issues the Government wishes to engage with key stakeholders on. Since the publication of this Consultation, a series of meetings has already been held, and further meetings are scheduled to take place over the course of the next few months to progress the work on proposed exemptions. The comments to this Consultation provided by respondents will be considered as part of this work.

Dégrévement

Several comments were received on the procedure of dégrévement. However, the comments received, were not, in the main, comments on the proposed amendments directly relating to the introduction of the consumer credit regime. Rather, respondents felt that a wholesale reform, repeal and/or replacement of the dégrévement regime should take place and that the amendments proposed because of the introduction of the consumer credit regime were only part of the solution to a regime that is considered unfair and outdated. The comments provided by respondents are noted by Government.

At the time of writing, Government is working on proposed amendments to the Securities Interest (Jersey) Law 2012 (“**Securities Interest Law**”). It is felt that many of the proposed amendments would be more appropriately dealt with as part of that project. Consequently, to avoid unnecessary delay to the introduction of the consumer credit regime, only amendments necessary to the implementation of the consumer credit regime will be

considered here, but policymakers working on the Securities Interest Law amendments will be provided with the comments on dégrèvement submitted as part of this Consultation for consideration in due course.

Debt Collection Regulations

One respondent was supportive of the approach proposed in respect of the Debt Collection Regulations. Another respondent sought clarification of the timeline for the proposed Debt Collection Regulations.

Draft Debt Collection Regulations setting the standards expected of those carrying out debt collection of consumer credit agreements and arrangements will be drafted and refined with stakeholder engagement. As indicated in the Previous Consultation, it is anticipated that these will be in line with the standards already set in the voluntary code of conduct for debt collectors, with some updating. Draft Debt Collection Regulations will then be consulted upon as part of the suite of secondary legislation. It is anticipated that the consultation will take place towards the end of the first half of 2025.

Unfair Terms Regulations

Noting that these have not yet been provided for consultation, a variety of comments were offered on the proposals for Unfair Terms Regulations more generally. These include, but are not limited to, the following:

- the regulation of unfair terms should only apply to activities supervised by the JFSC, though noting that draft Unfair Terms Regulations have not yet been provided and if Unfair Terms Regulations are adopted, they should be certain in scope and application
- whether key facts statements (as deployed in the UK) would be introduced for lenders
- what the parameters in respect of commissions paid by lenders to brokers in respect of introducing business will be, particularly in light of the review underway by the Financial Conduct Authority in the UK and recent UK court cases

Although the proposed Unfair Terms Regulations are yet to be consulted upon, it remains Government's intention that a restriction on unfair terms and other requirements issued under these regulations will apply to consumer credit business irrespective of whether an activity is regulated under the proposed draft Law or not. Only two negative responses were received to this approach in this Consultation, which were outweighed by multiple responses in support from across both consultations and expressed through continued stakeholder engagement. It is important to ensure transparency and fairness creating a level playing field for consumers of credit and consumer credit businesses alike. It is intended that the proposed unfair terms such as high commission and cooling off periods and regulations relating to annual percentage rates ("**APR**") and total cost of credit ("**TCC**") will enable this in a proportionate manner.

We note the comments raised and will look to address these with stakeholders as we develop the Unfair Terms Regulations and consult later in 2025.

Timeline

A high-level timeline for the implementation of the consumer credit regime is below. This is an indicative timeline only, as some of the factors enabling compliance are outside of Government control:

- Q1 2025: Lodge draft Law for debate in the States Assembly
Commence further work with key stakeholders in respect of secondary legislation being drafted
- Q2 2025: Consultation on draft Regulations and Orders
Draft Law debated in States Assembly (within 6 weeks of lodging)
- Q3 2025: Response to consultation on draft Regulations and Orders
Subject to States Assembly approval of the draft Law, Privy Council consent obtained
- Q4 2025: Draft Regulations lodged for debate in the States Assembly
- Q1 2026: Draft Law comes into effect with a 12-month transition period

Next Steps

As indicated in the timeline above, the next step will be for the draft Law to be lodged with the States Assembly for debate. Debate will take place approximately six weeks after lodging. Once the draft Law has been lodged, focus will turn to the secondary legislation that is yet to be consulted upon and finalised.

We have worked closely with industry and key stakeholders throughout 2024 and will continue to do so throughout 2025 as we develop the Regulations and Orders. Some of this engagement and consultation may take place jointly with the JFSC, particularly as the JFSC look to develop their Codes of Practice and Guidance for supervision of the regime. We have already set out above some of the groups with which we will engage further, e.g. motor traders, though more groups may be identified as work continues in this area.

Although certain amount of engagement has already taken place in respect of these, some of the key topic areas in which we anticipate more detailed engagement with stakeholders are:

- discretionary commission, TCC and APRs
- the approach to be adopted towards linked credit and/or store credit
- the approach to be adopted towards buy-now-pay-later
- the approach to be adopted where agents may be carrying out activities on behalf of entities that will be regulated under the draft Law
- the use of personal guarantees by individuals acting in their trade, profession or business capacity who may guarantee their primary residence
- various agencies that will have roles and responsibilities related to secondary legislation, including, but not limited to the Channel Islands Financial Ombudsman, Trading Standards, the Viscount's Department

Again, as work commences more topics requiring detailed consideration and consultation may be identified and we will address these as work progresses.