Guernsey Financial Services Commission

Consultation Paper on The Lending, Credit & Finance Rules, Guidance and Implementation

Issued 21st July 2022

Responding to the Consultation Paper

Responses to this Consultation Paper are welcomed before 15th September 2022.

You can send your response to us via the Consultation Hub section of the Commission's website (www.gfsc.gg).

https://consultationhub.gfsc.gg

Contents page

1 Introduction

1.1 The Lending, Credit and Finance (Bailiwick of Guernsey) Law, 2022

At its meeting on 14 July 2022 the States of Guernsey approved[1] the introduction of *The Lending, Credit and Finance (Bailiwick of Guernsey) Law 2022* (the "Law")[2], which was approved by the Chief Pleas of Sark at its meeting on 6 July, and by the States of Alderney at its meeting on 20 July. The new Law is due to come into force by the end of 2022. *The Lending, Credit and Finance Rules and Guidance, 2022* (the "Rules") are planned to come into effect shortly afterwards.

The purpose of the Law is to protect customers in the Bailiwick who make use of consumer credit in all its forms: individual loans; home finance; and credit for the purchase of goods and services. Firms offering such services in or from within the Bailiwick will need to be licensed and will be regulated accordingly.

The Law also introduces the licensing and regulation of "financial firm businesses" ("FFBs"); "Virtual Asset Service Providers" ("VASPs") in relation to virtual assets, and crowdfunding/peer to peer intermediation services. The FFB regime replaces registration under the existing *Registration of Non-Regulated Financial Services Businesses (Bailiwick of Guernsey) Law, 2008* (the "NRFSB Law").

1.2 Background

This Consultation Paper ("CP") follows the Credit and Finance Legislation Policy Letter (the "Policy Letter") published by the Policy & Resources Committee and Committee for Economic Development in December 2020[3], which builds on previous work. Since the Policy Letter's approval, the Commission has engaged extensively with stakeholders in developing its approach to the new Law and in drafting Rules for licensees. We sought to engage as widely as possible and met with more than 50 firms, many more individuals, and held a number of breakfast presentations for different industry groups.

We were given a clear message by industry that moves to properly regulate the credit and finance sector and to protect consumers would be welcome. In doing so, industry would prefer the Bailiwick to adopt an approach aligned with, but significantly streamlined in comparison to, that of the UK. One of the main concerns was that rather than invent a new approach unique to the Bailiwick, which would impose additional costs and overheads, we should follow existing principles and approaches. This would allow businesses to make use of existing knowledge and expertise, and where appropriate, to make use of systems and processes that had been tried and tested elsewhere. At the same time, industry was keen for the Commission to look to reduce the overall volume of rules and regulations, which in the UK run to hundreds of pages of detailed rules and guidance.

---

[1] Details of the States meeting and the Billet d'Etat can be found on the States of Guernsey website: States Meeting on 13th July 2022 (Billet d'Etat XII) - States of Guernsey (gov.gg)

[2] Please find a copy of the draft Law on the States of Guernsey website: CHttpHandler.ashx (gov.gg)

[3] The Policy Letter was approved by the States of Guernsey on 2 February 2021. It can be found on the States of Guernsey website: Credit and Finance Legislation - States of Guernsey (gov.gg)

We have endeavoured to deliver this approach with the attached Rules. We consider this provides an approach which properly regulates the sector and provides appropriate protection for Bailiwick consumers within a framework that is considerably streamlined compared to that of the UK.

Consumers will benefit from the knowledge that their interests are safeguarded. Firms must treat customers fairly. They must provide information which is clear and sets out charges and interest rates in a manner that allows consumers to make fair comparisons and informed choices between providers, ensures that they understand the terms of agreements which they enter into and are protected against misleading or unfair contract terms. This is increasingly important as economic conditions become more difficult and consumer finances are stretched by higher prices and interest rate increases begin to take effect.

As well as replacing rules for "financial firm businesses" previously included in the NRFSB Law, the Law and accompanying Rules address fintech platforms operating crowdfunding and peer to peer platforms and virtual asset service providers. It introduces licensing for a wide range of activities related to crypto currencies and other virtual assets that have not previously been regulated in the Bailiwick. This is necessary to meet international standards and ensure that, as an international finance centre, we continue to be compliant in combatting financial crime. Regulation of VASPs is essential ahead of the forthcoming MONEYVAL evaluation of the Bailiwick. It is also timely given increased scrutiny around the sanctions applied to Russia, as well as recent events in the world of virtual assets, which have seen high profile failures and a substantial reduction in the value of virtual assets. This raises serious questions about the risks involved and their suitability for retail customers.

While the Rules look daunting in their scope, and run to approximately 90 pages, they cover more than just consumer protection. For the majority of licensees, only a part of the Rules apply. For example, firms which are conventional credit providers can disregard the detail for VASPs or Fintech platforms. Fewer Rules are relevant to credit and home finance brokers, which must meet the relevant criteria for licensing, treat customers fairly and follow the principles for the conduct of finance business, but are not themselves subject to the full detailed Rules that necessarily apply to lender and credit providers.

1.3 Purpose of the Consultation Paper

The purpose of this CP is to set out the Commission's Rules and approach for regulating the sectors covered by the new Law approved by the assemblies of the Bailiwick of Guernsey at their meetings in July and to seek feedback on the proposed Rules and approach. A copy of the (draft) Rules is attached.

The Commission is seeking feedback from a wide range of stakeholders, including consumers and potential licensees. By engaging with the Commission at this stage you will assist us in the development of our supervisory approach. In section 3.1 we have highlighted the key areas that would be relevant to consumers, who may be less familiar with responding to consultations.

The CP includes provisional figures for the fees for various activities, which will themselves be the subject of a separate consultation. We think it is important to include them in order to

provide context for this consultation. The proposed fees form part of the Commission's annual fees CP[4], which runs concurrently with this consultation.

If you have specific comments on the level or nature of fees, please respond to the separate fees consultation and please indicate if you have done so in your response to this paper.

This is an 8-week consultation and responses should be submitted to the Commission via the link to the Consultation Hub, which can be found on the Commission's website, by the 15 September 2022. During the consultation period we will hold a number of meetings with stakeholders to address any questions they may have before responding to the consultation.

1.4 Timetable

Prospective licensees who wish to continue existing activities or to carry on new business after the full implementation date, scheduled to be 1 July 2023, will need to ensure that they apply for a licence in time to ensure that it is in place by then.

Firms which are currently registered as Non-Regulated Financial Services Businesses ("NRFSBs") will need to apply for licences under the new Law. New licences will need to be in place by the 1 July when provisions of the NRFSB Law are replaced by the requirement for licensing under the LCF Law. As with other activities, former NRFSBs which do not have a licence in place will not be able to conduct new business after 1 July 2023.

We anticipate that the Rules should be approved and come into effect by the 31 December 2022 and propose to open the window for licence applications on 1 January 2023.

The Commission aims to open the window for licence applications from 1 January 2023 with the intention that the new regime will come into effect on 1 July 2023.

[4] The Commission's consultation on fees for 2023 can be found here: https://consultationhub.gfsc.gg

2 Scope of the new Law

The new Law covers four areas, with activities licensed under different parts of the Law:

- **Consumer credit & home finance ("Part II")**
  Credit providers; including lenders, credit and home finance brokers and others providing services ancillary to the provision of credit.

- **Financial firm businesses ("Part III FFB")**
  Firms carrying out a range of financial services activities and which are not regulated under one of the Bailiwick's regulatory Laws - many of which will have previously fallen within the scope of the NRFSB Law;

- **Virtual asset services providers ("Part III VASP")**
  Firms and individuals providing virtual asset services (this does not include persons investing in virtual assets for their own account or businesses accepting virtual assets as a form of payment); and

- **Peer to peer and crowdfunding ("Part IV")**
  Financial intermediation services which match investors to those seeking funding (crowdfunding and peer to peer services).

3 Who will be affected?

3.1 Consumers in the Bailiwick of Guernsey

The new Law introduces modern consumer protection measures for individuals who take out loans, home finance or make use of consumer credit arrangements to purchase goods and services from those licensed by the Commission. The Law introduces the concept of a regulated agreement[5], to which these consumer protection measures apply. While many lenders already follow good practice and provide customers with clear contracts and relevant information, it is not always the case.

In future, customers will be entitled to, and lenders must provide: information in advance of entering into a regulated agreement; clear statements of monthly payments; the total cost of credit; and interest rates. This must be done in a way that allows customers to make meaningful comparisons between different types of credit. Licensees will be required to carry out customer due diligence in relation to the services they provide to consumers, as part of their regulatory requirements. This is consistent with financial services business worldwide. Licensees will be required to obtain sufficient information from their customers to assess whether a loan is affordable.

Customers will also be entitled to make early repayments without excessive penalties. Customers will have the right to be treated fairly in the event that they get into financial difficulty. Customers will also have certain rights in respect of unfair contract terms. The Commission has identified a number of terms which it regards as unfair and would not expect licensees to include in their agreements with consumers. These are outlined in section 8.14.

The above, and other areas relevant to consumers in the Bailiwick, are covered in more detail later in the CP, from the perspective of the requirements that will be placed on licensees. We would welcome any consumer feedback in response to the questions raised in the consultation.

This does not prevent a customer from approaching a firm based outside the Bailiwick (whether in the UK or elsewhere), but if they do, they will not benefit from the protections outlined in the Law and these Rules. They would have to rely on those in the firm's home jurisdiction, which may or may not protect Bailiwick consumers.

The Law includes provision to designate jurisdictions as equivalent. This means that firms in designated jurisdictions meet the minimum standards of consumer protection provided by firms based in the Bailiwick (see section 4.4 below).

[5] A "regulated agreement", is defined in section 6 of the Law as an agreement: "*made by or on behalf of, and between –*
(a) a provider of credit and a customer who is an individual acting for purposes wholly or mainly outside that individual's trade, business or profession, whereby credit is provided and interest or other charges may be levied on the customer, or
(b) a provider of credit and any customer, whereby credit is provided and interest or other charges may be levied on the customer and the credit is secured against real property situated in the Bailiwick and used for residential purposes."

3.2 Licensees:

1. Credit providers

A broad range of financial service providers including banks, building societies, non-bank lenders who provide loans, home finance, and consumer credit, and retailers who provide credit in their own right.

These will now be regulated for consumer credit purposes. They will be required to meet the minimum criteria for licensing and to follow the Rules set out by the Commission.

2. Credit/home finance brokers and other ancillary service providers

This covers a range of services, which includes: credit and home finance brokers; introducers who arrange finance for customers; debt administrators; and retailers. This category includes retailers who act as brokers for the provision of credit, for example, motor traders offering finance arrangements from third parties (who are credit brokers).

Note that some retailers, e.g., the majority of high street retailers (subject to meeting the relevant criteria), are considered to be "Appointed Retailers" of a third party credit provider and will not need a licence in their own right.

3. Financial firm businesses and former Non-Regulated Financial Services Businesses

Most former NRFSBs will fall into the category of FFBs – although, those offering consumer credit or home finance products will fall under the provisions of Part II of this Law. This means that some will need to be licensed in their own right as credit providers, while others may be able to rely on equivalence provisions if they are authorised to provide specific services from a designated jurisdiction which offers consumers in the Bailiwick equivalent protection to the Rules set out here.

4. Virtual asset service providers

VASPs are not currently regulated within the Bailiwick, except where they are carrying out an activity which falls within the scope of an existing regulatory Law.

The VASP Rules included here, together with changes to the *Criminal Justice (Proceeds of Crime) Bailiwick of Guernsey) Law, 1999* (the "POCL") are designed to support the licensing framework being introduced to meet the latest international recommendations of the Financial Action Task Force ("FATF"). There will be a separate consultation on changes to the POCL and *The Handbook on Countering Financial Crime and Terrorist Financing* (the "Handbook")[6]. This will ensure the Bailiwick continues to be an internationally compliant jurisdiction when it comes to combatting financial crime.

Recent market events, such as the significant drop in the price of Bitcoin and other virtual assets and the collapse of the so-called "stablecoin" Terra, have highlighted that virtual asset markets are unstable, volatile and can expose investors to significant amounts of risk.

[6] Changes are under discussion with the Law Officers of the Crown and will be consulted on in due course, with the aim that the required changes would be enacted before the end of 2022.

Internationally there has been an increased focus on the potential for crypto assets to be used to circumvent UK and other sanctions on Russia since the invasion of Ukraine.

5. **Crowdfunding and peer to peer intermediaries**

These services are not currently regulated within the Bailiwick in their own right. Intermediaries offering these services in the Bailiwick are regulated only where they are carrying on an activity which falls under one of the regulatory Laws or are carrying out lending or another prescribed activity which requires them to register under the NRFSB Law.

The purpose of regulating such services is to ensure that customers, whether individuals or businesses, based in the Bailiwick and outside, can be confident that the platform operator is properly regulated and has sufficient knowledge and resources to effectively provide the service. It is not intended to provide specific investor protection with respect to the underlying investments.

3.3 Will licensing affect any commission payments or fees I receive?

The answer is maybe.

The LCF Law and the Rules do not prevent any service provider from accepting a fee or commission, but customers will need to be told that a fee or commission is received and may need to disclose the amount. There will also be Rules which restrict certain types of commission arrangements which are detrimental to customers.

4 Who will need a licence?

4.1 Newly regulated firms

The Law brings into the scope of regulation a range of businesses that have not previously been regulated, or which have been registered but not licensed by the Commission. This affects:

- firms offering consumer finance;
- firms offering home finance;
- non-bank lenders;
- credit brokers;
- home finance brokers;
- debt administrators;
- relevant retailers;
- virtual asset service providers;
- platform operators (for crowdfunding and peer to peer platforms).

Retailers which offer their own finance or act as brokers (e.g., motor traders), are likely to need a licence in their own right. Retailers which offer credit from a licensed third party credit provider may be considered an "Appointed Retailer" of that credit provider.

4.2 Firms previously registered under the NRFSB Law

Most firms previously registered under the NRFSB Law will now need to be licensed. Some NRFSBs which are engaged in consumer finance activities and regulated in their home jurisdiction may not require a licence, where it is determined that the jurisdiction offers equivalent protection for Bailiwick customers.

4.3 Existing licensees

There are firms licensed by the Commission under other regulatory Laws, who will be familiar with the Commission's approach which may need an additional licence depending on the activities they carry out. Firms which offer consumer finance will need a licence under Part II of the Law in addition to their existing licence. This includes banks, which are licensed to accept deposits but at present are not specifically regulated in respect of their lending activity.

Firms licensed under one of the regulatory Laws which also carry out FFB activities will generally not need a separate licence under the Law,[7] unless carrying out consumer finance activities. Existing licensees intending to carry out VASP activities or initial coin offerings ("ICOs") will generally be required to hold a licence under the Law.

[7] This replicates the arrangements under the NRFSB Law, except for consumer finance activities, which require additional licensing.

4.4 Equivalence

Firms located outside the Bailiwick which target customers in the Bailiwick must either be licensed in the same way as their local counterparts or licensed to operate from a jurisdiction which offers equivalent protection to consumers. The Policy & Resources Committee has the power to designate jurisdictions, which provide protection to customers equivalent to those that would be provided by a firm licensed here, as equivalent. Equivalence arrangements apply only in respect of consumer finance activities regulated by Part II of the Law.

Such firms must be authorised to provide the relevant services in their home jurisdiction and must conduct their business in the Bailiwick in a manner which affords equivalent protection to customers of that activity. Under the Law the Commission has the power to require firms to:

- notify the Commission that they wish to operate in the Bailiwick; and
- provide information requested by the Commission

The Commission has the power to issue directions (under section 39 of the Law), which may require firms to conduct business in a specific manner or prohibit individual activities from being undertaken in connection with the Bailiwick.

4.5 Structure of the Law and licensing

The Law is divided into several parts. Part I deals with general provisions. The various licensing arrangements are arranged as follows:

What?	Licensed under?	Who?
Credit providers	**Part II**	• Consumer credit and home finance providers, which will include banks and non-bank credit and home finance providers • May include retailers who extend credit directly to customers
Brokers and other ancillary service providers	**Part II**	• Credit brokers • Home finance brokers • Introducers • Debt administrators • Retailers who offer or arrange credit • Motor traders offering third party credit
Financial firm businesses	**Part III FFB**	• The activities set out in Schedule 1 (which mirror the former NRFSB Law) and include credit provision and other services Unless: • Licensed under Part II of the Law, another regulatory Law, or exempt under section 20 of the Law

Virtual asset service providers	**Part III VASP**	Entities that, by way of business: • transfer virtual assets • exchange virtual assets, either for other virtual assets or for fiat currency • offer the safekeeping and custody of virtual assets • make initial coin offerings or participate and/or provide financial services in relation to the issue of virtual assets Except for: • Natural or legal persons who invest in virtual assets on their own behalf (includes collective investment schemes authorised/registered under the POI Law[8])
Crowdfunding and peer to peer platforms	**Part IV**	• Intermediaries/platform operators for crowdfunding and peer to peer arrangements (if the peer to peer/crowdfunder is the lender, Part II will apply)

4.6 Virtual asset service provider businesses

Virtual assets are defined under section 17(4) of the Law as:

> "a digital representation of value that can be digitally traded, or transferred, and can be used for payment or investment purposes, but virtual assets do not include digital representations of –
>
> (a) fiat currencies, or
>
> (b) general securities and derivatives within the meaning of category 2 in Schedule 1 to the Protection of Investors Law and other financial assets."

The Law defines which activities, when carried out by way of business, require licensing but this does not make clear what kind of business activities a VASP might undertake. Below is a list of some examples of VASP business models. This list is not exhaustive and the key element determining whether a firm requires a licence will be whether they carry out the activities specified by the Law.

- Virtual asset exchange (custodial or non-custodial)
- Conducting an initial coin offering
- Virtual asset lending businesses
- Interest earning virtual asset "deposits"
- Virtual asset custody services
- "Stablecoin" issuers
- Issuing financial products backed or secured by virtual assets
- Operating a decentralised autonomous organisation ("DAO")

[8] The Protection of Investors (Bailiwick of Guernsey) Law, 2020

We would encourage any firm or individual who believes they may be carrying out any of these activities, or who might wish to in the future, (and who would therefore need to be licensed under the Law) to contact the Commission at an early stage to discuss your proposed activities and our requirements.

4.7 Dual licensing

In order to carry out certain activities, firms (or individuals) which carry out multiple regulatory activities may need to be dual licensed under different regulatory Laws or may need to be licensed for more than one activity under the Law. There is guidance for firms on the overall scope and the extent to which existing licensees are covered by the Law. Some activities which might previously have been considered under other regulatory Laws will now fall within the scope of the Law, for example, the operation of a virtual asset exchange, might previously have been considered under the POI Law (although, if other regulated activities are conducted, both may be relevant).

Broadly speaking, firms which engage in consumer finance or home finance activities will need a licence under the Law in addition to any other licence they may hold. This applies to banks and other lenders, as well as intermediaries who provide services ancillary to the provision of credit, such as credit brokers or home finance brokers.

The Law will cover the licensing and regulation of exchanges dealing in virtual assets. Anyone engaging in VASP activity will (with a limited number of exceptions) require a licence under the Law in addition to any other licence they hold.

Firms engaged in FFB activities (as set out in section 9 of this paper) will not require an additional licence if they are already licensed under one of the regulatory Laws or satisfy the criteria for exemption.

For firms carrying out more than one activity under the Lending, Credit and Finance Law, the picture is similar. Some will need to be licensed under more than one part of the Law, depending on the combination of activities which they undertake.

As above, anyone engaging in consumer finance activities will need to be licensed under Part II of the Law, anyone engaged in VASP activities will require a licence under Part III and platform operators for crowdfunding or peer to peer lending under Part IV.

5 Minimum criteria for licensing (the "MCL")

All licensees will need to meet the minimum criteria for licensing.

Those with existing licences should already meet the criteria but, for new licensees and some firms registered under the NRFSB Law, this will impose new requirements they must meet. The full requirements are set out in detail in Schedule 4 to the Law. In summary, they cover:

- integrity and skill;
- fit and proper persons;
- appropriate composition of the board of directors;
- business to be conducted in a prudent manner; and
- provision of information required by the Commission.

Firms must comply with the requirement set out in Part 2 of the LCF Rules to have at least two persons directing the business who are based in the Bailiwick. The Commission is able to derogate this provision as appropriate, for example, in the case of sole traders, who do not have two people directing the business, and for whom the composition of the board of directors is not relevant.

As part of meeting the minimum criteria there are some common Rules that all licensees must follow. These requirements will be familiar to firms that already hold a licence but are summarised later in this paper for those firms that will be new to regulation. They include the *Principles of Conduct of Finance Business*[9] and the *Finance Sector Code of Corporate Governance*[10] .

5.1 Minimum capital requirements

The MCL include a requirement that businesses must retain sufficient resources to be able to finance their functions and meet their obligations as they fall due. This is similar to the "going concern" requirements for businesses in general.

Businesses must hold sufficient accessible capital so that, in a worst-case scenario in which the licensee's business gets into difficulty, it would be able to maintain operations to allow for an orderly winding-up and the transfer of contracts to another service provider. We would expect this to cover a minimum of a three-month period in respect of their licensee obligations.

For most licensees there is no further minimum capital requirement, but for VASPs there will be additional capital requirements. Due to the wide variety of VASP risks and business models, these will be specified on a case-by-case basis, initially at the point of licensing.

[9] Principles of Conduct of Finance Business
[10] Finance Sector Code of Corporate Governance

5.2 Minimum insurance and professional indemnity insurance ("PII") requirements

The MCL include an obligation for businesses to maintain appropriate insurance cover for the activities they undertake. In most cases this should reflect the requirements of the business itself.

For home finance providers and home finance brokers, who provide advice to customers on products and services that have a substantial and enduring financial impact, we require firms to ensure that they also hold appropriate PII cover, as specified in the Rules. This is to ensure consumer protection in the event of inadequate advice being provided by a licensee and is in line with some of our existing regulatory Laws.

6 Exemptions & exclusions from licensing requirements

There is a range of general exclusions and exemptions from the Law, which are set out below. The distinction between the two is that an exempted activity requires a specific exemption from the requirement for a licence to be granted by the Commission, while an excluded activity falls outside the scope of the Law.

The Commission may grant exemptions for a particular type of activity (a class exemption, which the Commission will publish on its website) or on a case-by-case basis (discretionary exemptions, which firms will need to apply for individually). An exemption or exclusion from one part of the Law does not necessarily provide an exemption from other parts of the Law. A firm may need a licence under more than one part of the Law if it carries out activities that are covered under more than one part of the Law.

It is not possible to provide a definitive list of activities that are excluded from the scope of the Law. Nevertheless, we considered that it would be helpful to identify a list of those activities which might otherwise be considered to fall within the scope of the Law, or which are peripheral to (and therefore provide some clarity on) the perimeter of its application.

6.1 General exclusions: activities which are outside the scope of licensing

There are activities which fall outside the scope of one part of the Law but are within scope for another. A case in point is the provision of loans to businesses. The provision of business loans is not considered to be in scope of Part II, and therefore does not require a licence under Part II of the Law, but such lending is likely still to fall within the scope of Part III of the Law as an FFB activity.

While this may appear inconsistent, it is because the rationale behind the different parts of the Law is different. The purpose of Part II is primarily the protection of customers, but Part III is largely concerned with ensuring that the relevant activities are properly regulated for the purposes of anti-money laundering and the countering the financing of terrorism ("AML/CFT").

The following activities are outside the scope of the Law for the purposes of licensing under Parts II and III:

Lending (providing credit) without fees or interest

Lending to consumers, which is interest free and incurs no other fees (or potential fees) or charges, is not a regulated credit activity under Part II of the Law.

If credit is provided to customers who are individuals, and there are any fees, charges or interest, then the provision of credit falls within the scope of the Law.

Note that charging higher prices for goods bought on credit terms compared to other payment methods or requiring the purchase of additional products or services, such as warranties or service contracts, in order to access "interest free" credit terms will bring the provider within scope of the Law.

Buy now, pay later ("BNPL") arrangements

True BNPL arrangements to pay for goods or services by instalments, where there are no fees, interest, or other charges to customers, and no fees for late payment, falls outside the scope of the Law, provided that agreements do not permit the credit provider to default to a traditional interest paying credit agreement.

Customers should not be required to pay higher prices for goods or services purchased in this way (as that would be considered a cost of credit), nor should they be required to purchase additional services, warranties, or insurance as a requirement to qualify for such arrangements (although they may opt to do so if they wish).

If customers are required to purchase insurance, warranties or other services in order to take advantage of "interest free" credit, it is considered to be a regulated credit agreement within the scope of Part II of the Law.

Settlement of invoices

The settlement of invoices for goods and services in the normal course of business is not a regulated credit activity and is outside the scope of the Law. That is the case even if there are provisions for extended payment periods (e.g., 30, 60, 90-day settlement terms) or for late payment charges.

Instalment arrangements and budget accounts for utility bills

Payment for services, such as utility bills, through instalment arrangements, which do not incur fees or interest but average out charges across the course of a year, are not considered to be a regulated credit agreement for the purposes of the Law.

Instalment arrangements for insurance premiums

Instalment arrangements for insurance premiums, which do not incur interest charges, fees, or otherwise increase the cost of the insurance, are not regulated credit agreements for the purpose of the Law. Where interest is charged, the arrangement would be a credit agreement and fall within the scope of the Law. Further detail is provided below.

Lending to family members

This is outside the scope of the Law and does not require a licence. The Commission does not consider it to be a commercial activity and irrespective of whether there are charges or interest, it is not considered to be by way of business.

Lending to friends

A one-off loan to a friend, with no charges or interest, would be outside the scope of the Law. However, a repeated pattern of loans, or lending with the imposition of fees, charges or interest, would be within scope of the Law.

Directors' loans

Loans to or from directors of a business are not considered to be a consumer credit for the purposes of the Law.

Employee loans

Interest free employee loans, as with other loans for which there are no fees or charges, are outside the scope of the Law.

Loans to employees with fees or interest are not excluded, they fall within the scope of the Law. However, employers who wish to offer loans with interest or charges to employees for a specific purpose (for example to assist in the purchase of a bicycle or e-bike) may apply for a discretionary exemption from the licensing requirements. The Commission will consider applications on a case-by-case basis.

Borrowing from a retirement annuity trust scheme ("RATS")/pension arrangement

Borrowing from a RATS/pension arrangement by the beneficial owner is not considered to be the provision of credit for the purposes of the Law.

Litigation financing

Litigation financing is outside the scope of the Law, unless it involves a lending arrangement for which interest or other fees may be charged; such an arrangement would fall within the scope of Part II or Part III of the Law (depending on whether credit is for an individual or a business).

Charities

The provision of grants or interest free loans by charities is outside the scope of the Law and does not require licensing.

We do not consider that a blanket exemption is required for charities, and charities wishing to offer loans with interest will either need to be licensed or to apply to the Commission for a discretionary exemption. This aims to ensure that the same degree of protection applies to those receiving loans from charities as from other providers when they include interest, fees or charges.

6.2 Activities outside the scope of Part II of the Law

The following activities identified below are outside the scope of Part II of the Law but may fall within the scope of Part III. This means that a Part III licence may be required by firms which are not licensed under Part II of the Law or another regulatory Law.

In general, lending secured against residential property in the Bailiwick constitutes a regulated agreement and requires the lender to be licensed under Part II of the Law, unless covered by one of the exclusions identified below or the subject of a specific exemption (see section 6.3 below).

Lending secured on property outside the Bailiwick

Any lending which is secured on property which is outside the Bailiwick falls outside the scope of the Part II of the Law.

Lending secured on non-residential property in the Bailiwick

Lending secured on Bailiwick property which is not residential property falls outside the scope of Part II of the Law.

Complex ownership arrangements for Bailiwick residential property

Lending secured against a residential property which is owned through a company or trust does not fall under the definition of consumer credit because credit is not being provided to an individual. Such an arrangement would not be considered home finance because the property is the home of a natural person (the individual) other than the legal person carrying out the borrowing (which is a separate legal entity), even if the property is ultimately owned by that individual.

6.3 Activities outside the scope of Part III of the Law

There is a selection of activities which might naturally be considered to be included within the scope of FFB activities but which in practice fall outside its scope or are covered by exemptions within the Law itself.

In the Law, Part B of Schedule 1 specifies regulated businesses that are not subject to licensing as an FFB. These are activities which would ordinarily fall within the definition of a "financial firm business" within Part A of Schedule 1 but which have been specifically excluded in Part B of that Schedule.

Firms which are licensed under another regulatory Law or Part II of the Law

Firms which are licensed under another regulatory Law (as set out in Part B of Schedule 1 to the Law) do not require a licence under Part III of the Law to carry out FFB activities. This carries forward the existing arrangement under the NRFSB Law, with the addition of provisions for collective investment schemes.

Collective investment schemes

Collective investment schemes which are authorised or registered under the POI Law are now specified in section 24 of the list of regulated businesses identified in Part B of Schedule 1 to the Law. This means that such schemes do not require a licence under Part III of the Law in respect of FFB activities. However, collective investment schemes which enter into regulated agreements for consumer credit or home finance must be licensed under Part II of the Law.

Payment service providers and other money service businesses

The provision of services by payment service providers (which are one type of money service business) in response to a direct approach from a customer such as a retailer or merchant based in the Bailiwick does not require a licence, this constitutes "Reverse solicitation". For the avoidance of doubt, customers or merchants who make use of such services, whether directly at their premises or via a website, will not require a licence.

However, a payment service provider which wishes to operate within the Bailiwick, set up a local branch or to target customers directly falls within the scope of the Law and would require a licence. Directly targeting customers in the Bailiwick means advertising in local media (local radio, Channel TV, Guernsey Press or Bailiwick Express), targeting Bailiwick or Channel Island customers, it does not, for example, include advertising in the national (UK) media.

Collective investment schemes, individuals, and non-financial businesses trading on their own accounts

The Commission proposes to direct that certain activities, set out below, do not constitute acting by way of business for the purposes of section 17 of the Law.

Private individuals who choose to invest in virtual assets on their own account are not required to hold a licence. Similarly, collective investment schemes and businesses that decide to hold virtual assets as part of their asset allocation or investment strategy, when doing so for their own account, would not be required to hold a licence.

Traders accepting virtual assets as a means of payment

A trader accepting virtual assets as a means of payment for goods or services which they provide in the normal course of their business would not constitute carrying out a VASP activity for the purposes of the Law.

However, traders that accept virtual assets should take care that they are not used as a means to exchange virtual assets into fiat currency (or other virtual assets) by, for example, bad actors making multiple purchases or transactions in virtual assets, then requesting refunds in fiat. We consider such activity to be acting as a VASP by way of business and a licence would be required.

6.4 Activities to be exempted by the Commission

The Commission intends to use its powers under the Law to exempt certain activities from the scope of the Law, including making use of powers under section 40 to provide class exemptions for activities identified below. Under certain circumstances, the Commission may also provide individual exemptions. These are subject to application and the relevant fee will apply.

Leasing and hiring

The Law is drafted to include the hiring or leasing of goods under a regulated agreement as a form of credit. The purpose of this provision is to ensure that "rent to own" and "rent to buy" arrangements and certain more complex forms of motor vehicle purchase/lease arrangements (including personal contract plans) are covered by the Law.

It is not intended that the simple hiring or leasing of goods within the Bailiwick should be regulated by the Commission, but given the drafting of the Law, stakeholders have raised a concern that this could be the case. The Commission therefore intends to exempt any such arrangements unless they form part of a "rent to own" and "rent to buy" arrangement or involve the purchase/lease of a motor vehicle.

For the avoidance of doubt, straightforward vehicle hire arrangements will be exempted, but arrangements with the option to buy (personal contract plans) for a final payment or "balloon" will not be exempt from the requirement for licensing.

Certain types of lending secured on residential property in the Bailiwick

Lending which is for the purpose of:

- buy-to-let;
- development; or
- bridging finance

and is secured on residential property in the Bailiwick, will be exempt from the provisions of Part II of the Law, provided that no part of the credit is secured against the borrower's family home. Such arrangements may continue to fall under Part III of the Law.

Lombard lending

Lending which is fully secured against marketable securities held in a custody account and where the customer meets the definition of a high-net-worth-individual ("HNWI") will be exempt from the requirement for a Part II licence, provided the lender is licensed under a regulatory Law.

Lending by administered entities

(i) Intra-group lending by administered entities

Firms which are administered by a licensed fiduciary will be exempt from the requirement for a licence for lending to another person or arrangement which is under common beneficial ownership. For such transactions, the administering fiduciary will be responsible for conducting appropriate customer due diligence and ongoing monitoring, as well as ensuring that the relationship and transaction comply with AML/CFT obligations.

(ii) Occasional transactions by administered entities

If an administered entity intends to carry out occasional transactions which would otherwise require it to hold a licence under the Law, it may apply to the Commission for a discretionary exemption. In granting an exemption, the Commission would require the administered entity to ensure (through contractual arrangements as necessary) that the licensed fiduciary which administers the entity will carry out the due diligence and ongoing monitoring, as well as ensuring that the relationship and transaction comply with AML/CFT obligations, including appropriate customer due diligence ("CDD") and will provide such information to the Commission as it may require.

These exemptions will not apply to any transactions that are regulated agreements under Part II of the Law. If an administered entity wishes to offer consumer credit or home finance in its own right, it would need to hold the relevant licence under Part II of the Law.

Licensed fiduciaries and fund administrators

Licensed fiduciaries and fund administrators that provide services to client companies or structures that hold virtual assets for their own account will not be required to hold a separate VASP licence. The exemption would be provided under section 40 of the Law.

Virtual asset service providers acting as FFBs

VASPs licensed under a Part III VASP licence must meet AML/CFT obligations and the same minimum criteria for licensing as FFBs. There is no benefit in holding a second LCF licence therefore the Commission intends to exempt VASPs from this requirement.

Firms in run-off, not accepting new business

Firms which previously provided home finance or consumer credit but are in run-off at the time the Law comes into effect may apply for an exemption from the requirement for a licence.

The purpose of the exemption is to allow firms to continue to serve existing customers and to make limited changes to agreements, for example to permit changes in interest rates or to allow customers to take up discounted or fixed rate home finance offers from the credit provider.

The Commission does not consider that it would be in the interests of customers on such legacy agreements to require firms to apply for licences in order to permit a limited set of changes which reflect market movements or are beneficial to the customers concerned. We do not envisage such exemptions should last for more than 5 years.

This is addressed in more detail later in the CP, but the exemption does not apply to businesses which go into run-off after the Law comes into effect. They will be required to maintain their licence through the period of run-off.

Ancillary services provided by Appointed Retailers

As set out in section 8 of this CP, retailers who provide certain services which would otherwise be considered to be providing services ancillary to the provision of credit (e.g., acting as credit brokers) but are acting on behalf of a third party lender and satisfy the relevant criteria, will not be required to hold a licence in their own right.

Private Lenders

As described in detail later in this CP, private lenders who satisfy specific criteria, and appoint a licensed service provider (an "Appointed Service Provider" or "ASP") to act on their behalf, may apply to the Commission for an individual exemption from the requirement for licensing under the Law.

6.5 Exclusions and exemptions from Part IV: peer to peer and crowdfunding

There are no specific exemptions from this section of the Law.

Donation funding platforms are not considered to be in the scope of the Law, for example, giving.gg would not require a licence under the Law.

6.6 Activities which will be partially exempted from the Rules

Lending to high-net-worth individuals ("HNWIs")

Lending to individuals falls within the scope of Part II of the Law, including lending to HNWIs, so credit providers offering services to HNWIs will not be exempt from the requirement for a licence, but only a limited set of Rules will apply to such arrangements. Credit providers will be required to treat their customers fairly and to follow the *Principles of Conduct of Finance Business*, but detailed Rules on lending will not apply except in relation to the treatment of vulnerable customers.

HNWI customers must meet the relevant financial thresholds and agree to waive their rights under the Law. In determining if an individual may be treated as a HNWI, individuals may self-certify that they meet the relevant financial threshold, subject to appropriate safeguards (in particular for those over 75 years of age and those groups that that may be deemed more vulnerable) and appropriate due diligence by the licensee. The value of an individual's principal residence may not be included in determining if they meet the financial thresholds.

Consultation questions

Respondents are asked to comment on:
1. Is the scope of the exemptions proposed by the Commission appropriate? Are there any other activities that should be specifically exempted, and if so, why?

7 Which Rules apply to which categories of licensee?

There are some common Rules that all firms licensed under the Law will need to follow. These are summarised below. Please see the enclosed Rules for the full details.

- Accounting records – all licensed firms will be required to maintain accounting records and, for many firms, prepare audited accounts.

- Annual return – all licensed firms will be required to submit an annual return to the Commission four months after the end of their financial year. This will include a copy of their accounting records for the year along with some data on the volume and type of business they carried out.

- Outsourcing – all licensed firms will need to have appropriate systems in place to control and monitor any activities they outsource. The Rules also make it clear that licensees remain responsible for any outsourced activity or function.

- Customer relations – licensed firms will need to ensure that they deal with customers with due skill, care, and diligence and that they provide sufficient information about the products and services they offer.

- Complaints – all licensees will be required to maintain records of customer complaints and have a process in place to deal with complaints in a fair manner.

- Customer money – customer money is money that a licensee holds for, receives from, or owes to, a customer in the course of carrying out their business. Where a licensee holds customer money, they will be required to keep it separate from their own money, periodically check that the amount of customer money they hold is correct, and only pay it out to those it is owed to.

- Promotion and advertising – all licensees are responsible for the content of all adverts and promotions issued on their behalf and must make sure the content of such adverts is clear, fair, and not misleading.

- Financial resources – All licensees will be required to maintain sufficient funds to manage a three-month, orderly wind-down.

7.1 AML/CFT Provisions

It should be noted that provisions in respect of AML/CFT apply to most licensees, but not to ancillary service providers (such as credit and home finance brokers). The specific obligations are set out in the Handbook and the obligations under the POCL. There will be a separate consultation in due course on specific changes to the Handbook and POCL in order to comply with the latest FATF Rules, and in particular the requirements in relation to VASPs.

The below table summarises which sections of the Rules apply to different types of licensees. It is not a comprehensive list.

LCF Rules Section	Part II Credit Providers	Part II Credit Ancillary Service Providers	Part III Financial Firm Businesses	Part III VASPs	Part IV Platforms (Crowdfunding, Peer to peer)
Part 2 - Corporate governance and effective management					
Audited accounts (p10)	✓		✓	✓	✓
Annual return (p12)	✓	✓	✓	✓	✓
Outsourcing (p16)	✓	✓	✓	✓*	✓
Qualifications [for home finance brokers] (p19)		✓			
Part 3 - Conduct of business					
Customer agreements (p21)	✓	✓	✓	✓	✓
Complaints (p26)	✓	✓	✓	✓	✓
Customer money (p27)	✓	✓	✓	✓	✓
APR & cost of credit (p32)	✓	✓			
Promotion and advertising (p35)	✓	✓	✓	✓	✓
Part 4 – Prudential					
Professional indemnity insurance (p37) (for home finance only)	✓	✓			
Financial resources (p39)	✓	✓	✓	✓	✓
Part 5 - Cooperation with the Commission					
Notifications by licensees (p40)	✓	✓	✓	✓	✓
AML/CFT requirements in the Handbook	✓**	✓**	✓	✓	✓
Part 6 – Unfair terms	✓	✓			
Part 7 – Part II licences	✓				
Part 8 – Provision of ancillary services under Part II licences		✓			
Part 9 – Financial firm business			✓		
Part 10 – VASP licences				✓	
Part 11 – Part IV licences					✓

* These types of licensees are subject to additional or different requirements.
** Except those providing general insurance premium financing.

8 Consumer credit & home finance (Part II) licensees

In line with the Policy Letter, regulation is aimed at those providing credit to individuals and for credit which is secured against Bailiwick residential property for any customer.

8.1 Consumer credit and home finance providers

The Rules attached set out the conduct expected of credit providers and brokers in respect of regulated agreements. Consumer credit and home finance are provided by a variety of businesses, ranging from high street banks to retailers, and include specialist consumer finance providers (some of which are based within the Bailiwick, others of which are branches of businesses based elsewhere (in most cases this means the UK)), and there are a range of brokers and other businesses providing services ancillary to the provision of credit.

Most of the specialist lenders and consumer credit providers are familiar with the approach to consumer credit adopted in the UK, and many (such as the high street lenders) will already have systems and processes in place developed in line with UK practice. While we want to ensure that our approach is the most appropriate one for the Bailiwick, this is an area where we have already noted that there is much benefit in taking advantage of the arrangements that have been developed over the years in other markets.

Consultation questions

Respondents are asked to comment on:
2. Are the Rules in respect of consumer credit providers appropriate? If not, what alternative approach should be used?

Worked examples for consumer credit providers

The following examples are provided to help credit providers decide if they need a licence.

Consumer credit provider - Bailiwick based

I am a consumer credit provider based in the Bailiwick offering loans and credit arrangements to Bailiwick customers. I provide some loans directly from my own book but arrange others with third parties.

What do I need to do?

You will need to be licensed for both activities:

- **as a credit provider (for your own loans); and**
- **as a broker (for third party loans).**

You will only pay a single licence fee (the higher of the two).

In dealing with customers, you will need to make sure that you are clear about whether you are acting as a broker or lender (or both). When advising on loans, you will need to make sure that customers are offered the terms that are best for them (for example, you should not preferentially lend directly if there are better terms from your third party lenders).

Worked examples for consumer credit providers (continued)

Consumer credit provider – out of Bailiwick

I am a consumer credit provider located outside the Bailiwick offering loans and credit cards. I advertise in the UK press but do not target Bailiwick customers.

Do I need a licence?

No, you will not need a licence.
You are providing a service to customers who approach you ("reverse solicitation").

BUT customers are not protected by the Bailiwick's LCF provisions and may not be protected under the rules of the country of origin of the service provider. You should make clear whether and to what extent, customers are protected.

Consumer credit provider – out of Bailiwick

I am a consumer credit provider based outside the Bailiwick.
I provide credit cards and occasionally loans to customers in the Bailiwick. I do not have a local office, but from time to time my advertising does target Bailiwick customers.

Do I need a licence?

It depends.

If you operate from an equivalent jurisdiction, you do not need a local licence under the Law, provided that you offer protection to Bailiwick customers that is equivalent to that they would receive from a locally licensed firm. You will need to notify the Commission that you will be operating within the Bailiwick under the equivalence regime.

If your jurisdiction is not equivalent, you will need a local licence.

8.2 Home finance providers

The focus of the Law and Policy Letter is the protection of consumers in respect of their homes which are residential properties in the Bailiwick. For that reason, lending secured against residential properties which are not family homes, such as development properties and properties which are part of a buy to let arrangement, will be exempt from the full licence requirements under Part II of the Law. Note that lenders financing such arrangements are still subject to the provisions of Part III as FFBs, even if they are exempt from Part II.

Consultation questions

Respondents are asked to comment on:
3. Are the Rules in respect of home finance providers appropriate? If not, what alternative approach should be used?

The following worked examples have been provided to help lenders decide which type of licence applies.

Worked examples for home finance providers

Home finance provider

I provide home finance to individuals for their properties based around the world.

Am I caught by the Law?

Yes. The licence required will depend on the business you carry out.
If you provide home finance secured on residential property in the Bailiwick which is the borrower's primary residence, then you will require a licence under Part II of the Law.

If you only provide home finance secured on property outside the Bailiwick, you will need to be licensed as an FFB under Part III of the Law, unless you are otherwise exempt (for example, because you hold a licence under one of the other regulatory Laws).
If you provide credit secured against local property which is not the borrower's family home (e.g., "buy to let" finance, or bridging or development loans secured against the property under development), then you will need an FFB licence.

Worked examples for home finance providers (continued)

Home finance provider – buy to let/development loans

I provide loans for buy to let and/or development arrangements, to firms and to individuals, but not for primary residences.

Am I caught by the Law?

Yes. You will need a licence as an FFB under Part III of the Law.
Previously, you would have needed to register as a lender under the NRFSB Law.

A loan secured against the borrower's primary residential property within the Bailiwick is a regulated agreement under Part II of the Law. Lending secured against buy to let or development properties is exempt from Part II but the requirement to hold a licence under Part III remains.

Home finance provider – private lender

I am a private lender providing a small number of loans to people on an individual basis.
I do not consider this to be a business.

Am I caught by the Law?

Yes. This type of lending is within the scope of the Law (unless the loans are to family).
If you charge interest or fees, then this activity is being carried out by way of business and a licence is required. Loans to friends sit within the scope of the Law if interest or fees are charged, but loans to family members sit outside the scope regardless

You may apply for an exemption which the Commission will consider if:

- you offer only one or two loans each year; and
- your total loan book has a value of less than £1m.

You must continue to follow the LCF Rules and offer the same consumer protections as other lenders. You will be required to appoint another licensee (either a broker or lender) as your Appointed Service Provider (see section 8.17), who will be responsible for ensuring that the Rules are followed. Decisions about lending remain with you as the lender.

Without such an arrangement you may not benefit from this exemption and will need a licence.

8.3 Ancillary Service Providers

Ancillary service providers, which include credit brokers and home finance brokers, must follow the relevant Rules. These Rules are less onerous than those for lenders, since any regulated agreement would ultimately be held between a customer and a credit provider, who would also be licensed and subject to additional safeguards (including the carrying out of appropriate affordability checks).

In advising customers, brokers and other service providers must offer customers products which are appropriate to the customer's needs and circumstances and must provide advice that reflects the best value for the customer, irrespective of the fees, commission or other incentives the broker may receive. Where brokers offer a limited range of products, they must make clear to customers the extent of the available product range. Brokers must tell customers if they receive fees or commission payments from lenders and, if requested, must disclose the amount.

Because of the nature of home finance lending, home finance brokers must meet additional requirements. They must have a minimum level of qualifications in order provide advice to customers, they must hold appropriate professional indemnity insurance cover[11], and must disclose up front the amount of fees and commission they receive. The list of relevant qualifications is attached at Appendix 2.

Brokers and other firms or individuals licensed to provide services ancillary to the provision of credit (as identified in section 5 of the Law) will not be subject to AML/CFT supervision provided that they are not lenders in their own right, and provided that they are not acting as an Appointed Service Provider for another lender. Such arrangements are already covered for AML/CFT purposes by the lender who is responsible for the regulated agreement. This reflects the approach set out in the States' Policy letter.

Consultation questions

Respondents are asked to comment on:
4. Are the arrangements in respect of brokers appropriate? Is it reasonable to apply additional requirements for home finance brokers compared to consumer credit brokers?

[11] This covers a range of eventualities, including the potential mis-selling of products.

8.4 High street retailers & Appointed Retailers

In drafting the Rules, we have had regard to the fact that retailers have different approaches when offering credit facilities to pay for goods and services. We do not consider it necessary to require retailers to hold a licence for effectively offering an extra payment option for the benefit of customers when it is provided by a third party which is a regulated in its own right. Retailers would need a licence if they offer credit in their own right or act as a credit broker by offering multiple credit options and/or advice.

Credit providers and Appointed Retailers

To avoid the requirement for retailers offering third party credit to be individually licensed as credit brokers in their own right under Part II of the Law, the Commission's proposed approach is that retailers may act as the "Appointed Retailer" of a credit provider.

Under these arrangements, the credit provider would be responsible for the conduct of the retailer, who would effectively act as their agent and ensure that the relevant Rules in respect of credit provision and regulated agreements are complied with. Retailers which offer credit in their own right will need licence under Part II of the Law.

High street retailers which offer credit in their own right (not through a third party), whether as hire purchase arrangements, store purchase cards or instalment payment plans will need to hold a licence under Part II. Retailers that offer "Buy now, pay later" payment arrangements, with no interest charges, which last for less than 12 months, and which incur no fees or other charges (and may not default to a standard credit agreement in the event of late payments), will not need to be licensed under Part II of the Law.

High street retailers that offer credit through a third party which is a licensed credit provider may be considered to be an "Appointed Retailer" of the lender. In this case, the retailer will not need a licence in its own right. An Appointed Retailer is a high street retailer offering a single credit option for transactions[12]. In order to benefit from this exemption for credit arrangements, there must be an agreement in place between the lender and retailer under which the lender will be accountable for advising and training the retailer's staff and ensuring that the relevant Rules are followed. Otherwise, the retailer would be considered to be a credit broker and would require a licence in its own right. The retailer may receive payment for this service.

Consultation questions

Respondents are asked to comment on:
5. Are the arrangements for high street retailers appropriate? Is it reasonable to exempt Appointed Retailers from licensing where acting on behalf of a third party lender licensed in its own right?

[12] Note: retailer may have agreements with more than one credit provider for different type of goods. For example, a cycle shop might have one credit product for electric bikes and another for ordinary cycles.

Worked examples for retailers

Retailer - store credit

I do not offer credit cards or credit payments terms, but I give store credit for returned goods.

What do I need to do for this new legislation?

Nothing. You do not need a licence and do not fall in scope of the Law.
In this context "store credit" is not a consumer credit arrangement under the Law it is the equivalent of the retailer issuing a voucher or token.

Retailer – using third party credit providers

I am a retailer who offers credit arrangements for customers, but they are provided by a recognised lender who makes all the decisions on lending and collecting payments.

Am I caught by the new law? Do I need a licence?

You are in scope of the Law, but (probably*) do not need a licence in your own right.

Provided that you do not charge extra for goods or services sold on credit and have a written agreement with the third party lender, you may be considered an "Appointed Retailer".

An "Appointed Retailer" is a retailer appointed by a lender who provides credit to customers for the purchase of the retailer's goods/services. The customer's regulated credit agreement is with the lender, and the lender is responsible for ensuring the Rules are followed, whether work is carried out by their own staff or by the Appointed Retailer. This includes carrying out creditworthiness/affordability checks and ensuring that staff are properly trained to offer such products to customers. You may be paid by the credit provider for this service.

*Without a formal agreement, you would not be eligible to act as an "Appointed Retailer".
If you charge higher prices or make additional charges for goods bought on credit, this is a charge for credit and you will need your own licence.

Retailer – instalments but no interest or fees

I am a retailer who allows customers to pay for goods by instalments.
I never charge interest or fees – but if the customer persistently misses payments and fails to pay for the goods, I reserve the right to take them to court.

What do I need to do for this new legislation?

Nothing. You do not need a licence.
As there are no fees or interest (or potential fees), it is not a regulated agreement. If you eventually take customers to court for non-payment or petty debts, fees imposed by the court are not credit charges under the Law.

Worked examples for retailers (continued)

Retailer – higher prices for credit

I am a retailer offering interest free payment terms for my customers. I charge a little extra for goods bought on interest free credit, and there are charges for missed or late payments. Persistent late payers will be charged interest or moved to another credit arrangement.

Do I need a licence?

Yes. You are a credit provider and will need a consumer credit licence.
Charging extra for goods or services bought on credit means that there is a cost for credit and this is regulated agreement. Charging payment fees or including the ability to switch customers to an alternative interest-bearing arrangement would also qualify you as a credit provider, and this must be treated as a regulated credit agreement from the outset.

You must make sure customers are aware of the terms (including any potential charges), and that the costs are accurately represented in the annual percentage rate ("APR") quoted to customers.

Since you charge extra for credit and may make additional charges (or switch customers to interest-charging arrangements) you must not claim to offer interest free credit.

Appointed Retailer

I am an Appointed Retailer offering credit from a third party lender.

Do I need a licence?

No. The lender is responsible for ensuring that the Rules are followed and staff are appropriately trained.
The lender will need to advise the Commission that you are acting as an Appointed Retailer and provide any information we may request. You must have a written agreement with the lender setting out the arrangements. This should set out what you need to do for the lender and what support the lender will provide you.

The Commission may visit you to see how staff are trained and, for example, to ensure the lender is meeting its obligations, that there are appropriate arrangements in place for vulnerable customers, and appropriate creditworthiness/affordability checks are being carried out. Ultimately this is the responsibility of the lender.

Worked examples for retailers (continued)

Retailer - branch of UK firm and UK credit provider

I am a retailer in the Bailiwick which is a branch of a UK firm and use the parent company's UK based credit provider to offer consumer credit terms and/or store cards.

Do I need to be licensed in Guernsey?
(The UK stores' credit provision is regulated by the FCA.)

This is slightly complicated, but in most cases, as the retailer, you would not need a licence.
If credit is offered by a UK company which does not specifically target Bailiwick customers but provides services on application, no licence is required.

If credit is offered by a UK firm which specifically targets customers in the Bailiwick, it will require a licence under Part II of the Law. Alternatively, if, in line with its powers under the Law, the Policy & Resources Committee designates that the UK is an equivalent jurisdiction, the company is regulated by the UK FCA to provide those services, and it offers customers in the Bailiwick protection which is at least the equivalent of that which would be provided by a licensee in the Bailiwick, it would not require a local licence. The UK company would need to notify us of its intention to provide services to Bailiwick customers.

8.5 Motor traders

Motor traders that facilitate finance arrangements are considered to offer services ancillary to the provision of credit and in most cases are considered to be a special case of credit brokers requiring licensing and regulation under Part II of the Law.

Generally, they offer a range of products and services including credit products that are of relatively high value and which may be much more complex than those offered by high street retailers. Combining this with concerns raised elsewhere over motor finance, the approach adopted locally to advertising products (such as sticker prices showing monthly payments but no mention of credit costs or interest rates) and anecdotal evidence from motor traders of customers who have not fully understood their obligations under previous credit arrangements, we consider that this is a sector that will require careful regulation and supervision.

Motor finance contracts vary a great deal in their nature - from simple consumer loans and customer-supplier-credit provider arrangements to hire purchase and more complex Personal Contract Purchase (PCP) and other arrangements which may include balloon payments, mileage excesses and other charges. Given the complexity of the arrangements, this is an area to which the Commission will pay particular attention and one in which the provision of clear information to customers is essential. Motor traders and credit providers must ensure that customers fully understand the terms and obligations of the agreements they enter into, the nature of those agreements, and what the customer's obligations are under the agreement.

Consultation Questions

Respondents are asked to comment on:
6. Are the arrangements for motor traders appropriate? If not, what alternative would you propose?

Worked examples – motor traders

<u>Motor trader – arranging third party finance</u>

I do not offer credit myself but arrange third party finance.

Will I need a licence?

Yes. You require a licence as a credit broker.
You must follow all of the relevant Rules in respect of providing consumer credit.

Worked examples – motor traders (continued)

Motor trader – using third party or group company finance

I offer credit myself, but this is arranged through another group company and (on occasion) through third parties.

Will I need a licence?

Yes, you are within the scope of the Law.
It is likely that:

- you require a licence as a credit broker; and
- the associated company will require a licence as a credit provider.

You must follow all of the relevant Rules in respect of providing consumer credit.

Motor trader- using third party credit broker to arrange finance

I do not offer credit myself but advise customers to see a third party who is a credit broker.

Will I need a licence?

It depends…
If you charge a fee, collect information or fill out forms for customers, you are considered to be a credit broker and need a licence, even if the loan is arranged through another party.

If you simply refer the customer to a credit broker, then you are likely to be outside the scope of the Law and you will not require a licence.

8.6 High net worth individuals

Lending to HNWIs is within the scope of Part II of the Law, but only those requirements which relate to licensees in general and the principles for conduct of business apply in full. Rules for conduct in respect of individual regulated agreements are disapplied except with respect to the need to give appropriate consideration to vulnerable customers.

In order to be considered as a HNWI, customers must meet either the income or net assets thresholds set out below:

HNWI threshold	Applies to individuals with:	
	Income greater than	Net Assets in excess of
Consumer Credit	£100k pa	£1.5m
Home Finance	£300k pa	£3m

The calculation of net assets[13] must not include the customer's primary residence, any loan secured on it, or the benefits of a pension or lump sum payable on retirement or the termination of service of the individual concerned.

Where a credit provider wishes to treat a customer as a HNWI they must obtain the customer's (written) agreement, with the understanding that they waive their rights under the Law. The credit provider must also confirm that the customer meets the financial thresholds identified. Customers may self-certify that they meet the requirements, but lenders must have appropriate regard for any information to the contrary. The credit provider will be expected to conduct appropriate due diligence, and, in the case of customers over the age of 75 or those who may otherwise be deemed more vulnerable, will be expected to separately verify their status.

Lending to customers who are individuals and do not qualify as HNWIs, which is not secured against property, falls within the scope of Part II. Lenders and other service providers operating in or from within the Bailiwick will need to be licensed under Part II of the Law, irrespective of where the customer is based.

Consultation questions

Respondents are asked to comment on:
7. Are the thresholds for HNWI customers set at the appropriate level? If not, what should they be?

[13] Following the approach used in the FCA handbook CONC 1.4.6 etc.
CONC 1.4 Exemption for high net worth borrowers - FCA Handbook

8.7 Buy now, pay later

Buy now, pay later arrangements are payment methods where the customer is offered an option to pay for goods or services over several instalments, without interest charges or fees. These arrangements are usually financed by retailers themselves because they encourage customers to spend more and increase the overall value of sales.

True "buy now, pay later" arrangements, where the credit provider does not charge any fees or interest (irrespective of circumstances), fall outside the scope of the Law and are not regulated.

In practice, many of the arrangements promoted as "Buy now, pay later" permit the credit provider to charge fees or move customers to an interest-bearing credit arrangement should they miss payments or otherwise fail to meet the terms of the agreement. They may also charge higher prices to customers or require them to purchase other goods or services in order to benefit from the credit arrangements, which are hidden costs of credit.

Arrangements which incur late payment fees or charges, or where customers may be moved to different credit terms or required to pay additional charges if they do not complete payments on time or are required to purchase other goods or services, are credit arrangements which require a licence under Part II of the Law and should be regulated in the same way as any other consumer credit agreement.

The provider will be exempt from the need for a Part II licence, provided that they are "customer-supplier-credit provider" agreements for the supply of goods and services and their duration is no more than 12 months.

Consultation questions

Respondents are asked to comment on:
8. Is the approach in respect of "buy now, pay later" arrangements reasonable? If not, what alternative approach should be adopted?

8.8 Information for customers

Licensees must ensure customers are given the required information before entering into a regulated agreement and are provided with regular statements for its duration.

Information must set out the amount of credit being provided, the amount and frequency of repayments, the total cost of credit, and the interest rate expressed as an annual percentage rate. Information must be presented clearly and transparently, including any specific requirements that must be met by the customer to qualify for credit. Where there are fees or charges for credit, or any form of additional costs (including differential pricing of products), these must be stated clearly prior to entering into an agreement and expressly and prominently set out in the terms. Termination and early repayment costs must be clearly explained in advance of a customer entering an agreement.

Customers must be provided with a written copy of the agreement, prior to entering into the agreement, and given sufficient time to read and understand its content and terms.

The agreement must set out the customer's right to cancel, length of cooling off period, and how to exercise their right to cancel the agreement if they wish to do so.

In the case of an offer for home finance, where there are usually a number of further stages before the transfer of funds, the same cancellation rights do not apply but the offer/statement must set out the period of reflection and the duration of the offer (which must not be less than the period of reflection).

Consultation questions

Respondents are asked to comment on:
9. Are the information requirements for licensees reasonable? If not, what information should be required?

8.9 Interest rates and total cost of credit

Interest rates must be calculated as an APR in accordance with the Rules attached. The purpose of this is to ensure consistency and enable consumers to understand what they are paying and to be able to make comparisons.

Interest rates must be calculated to include any unavoidable fees and charges. We expect pricing for goods and services to be transparent – and where higher prices are charged for paying by credit this must be factored into the calculation of the total cost of credit and APR. The purpose of this is to ensure that customers are not faced by hidden charges for credit.

For the avoidance of doubt, fees include any costs which might be paid by the customer to a person who introduced the customer to the lender or to an Appointed Retailer of that lender.

There are separate calculations for regulated agreements which are considered consumer credit agreements and for those arrangements which are home finance products (including bridging loans, etc). In both cases, the calculations adopt the approach used by the UK FCA[14] and should be consistent. This will allow Bailiwick consumers to make reliable comparisons between offers from local providers and those based in the UK.

Where the price of goods or services is higher for those making use of credit arrangements, this is considered to be a cost of credit and must be treated as such in calculating both the total cost of credit and the APR as appropriate. Note that the total cost of credit includes all costs including interest, commission, taxes and any other fees or charges which the customer must pay in connection with the regulated credit agreement.

Where there are compulsory obligations to purchase other goods and services, such as payment protection, warranties, or other contractual arrangements, which is a prerequisite for accessing credit, the cost must be considered as part of the total costs and other relevant calculations. Where such arrangements are optional, and the customer is clearly advised that this is the case, they would not form part of the overall cost.

Consultation questions

Respondents are asked to comment on:
10. Is it reasonable to adopt APR calculations in line with those in the UK? If not, what alternative method should be adopted?

[14] Refer to Schedule 3 to the Rules

8.10 High interest and "payday" loans

Credit providers are not permitted to offer high interest or "payday" loans in or from within the Bailiwick. This reflects the current policy of the Commission and that set out in the States' Policy Letter, which requires that such Rules are intended to apply to all loans and are not limited to those of short duration. While Guernsey has an existing usury law (which dates back to the 1930s), it is not particularly clear or practical and has not recently been used.

What constitutes "high interest" depends on circumstances, including the amount and duration of the loan. For short term loans, fees, coupled with interest can give rise to very high APR interest rates, and therefore what constitutes a reasonable interest rate for a short-term loan is likely to be higher than for a longer duration loan. Any excess or penalty charge will be taken into account when considering whether charges are excessive. The roll-over of short-term loans must be taken into account in considering whether arrangements are fair or reasonable.

As a guide, for short term consumer credit any loan which has an interest charge substantially higher than comparable loans from other types of providers will draw the Commission's attention for further review and, depending on circumstances (including prevailing market conditions and Bank of England base rates), could be considered excessive.

For longer term loans, and loans secured against assets, a lower threshold may be appropriate, recognising the lower risks involved in secured lending.

For consumer credit (not including home finance loans), credit providers must not offer credit for which the total cost (including all fees, charges[15], and interest) exceeds the amount of credit being provided. It is particularly important to note that this applies to "rent to buy" arrangements and means that customers cannot be charged an amount that is more than double the normal retail price of any goods purchased in this way.

At this stage, apart from the maximum amount in line with UK, we are not setting specific limits for different types of agreements, but we will want to do so in the future.

Consultation questions

Respondents are asked to comment on:
11. Is it reasonable to apply limits on consumer credit charges as described? If not, what limits should apply?

[15] Standard APR calculations may omit some fees. The approach described is intended to ensure that additional "optional" charges (which increase the overall cost) are not levied on those who may be in difficult circumstances, and least able to afford them or to avoid high pressure selling of optional "extras" (e.g., insurance, warranties).

8.11 Promotion & advertising

There are specific Rules on how credit providers may advertise and promote their services.

Licensees must follow the principles that promotions should be fair, transparent, and not misleading. Where rates and repayments are shown, interest rates must be APRs available to the majority of customers (not limited or exclusive offers). Rates, repayments and the total costs of credit must be calculated in accordance with the Rules. Applicable terms and conditions, such as deposits, loan periods and specific conditions (such as mileage limits in respect of car purchase plans) must be prominently displayed. The Rules apply to all forms of promotion and advertising: traditional print media; radio/TV; online/social media; point of sale promotions (shop windows, windscreen stickers). Where such arrangements promote a specific credit provider, they must ensure that the promotions are fair and compliant.

Credit providers, and those who introduce customers to them, must not give the impression that particular promotions are endorsed or approved by the Commission.

Consultation questions

Respondents are asked to comment on:
12. Is it reasonable to apply the proposed Rules for promotion? If not, what alternative approach would respondents propose?

8.12 Cancellation, cooling off & periods of reflection

At the outset of an agreement, customers are entitled to a cooling off period of two weeks where they may cancel the loan or credit agreement without incurring a penalty.

This does not affect any other statutory rights of the consumer (whether they would be able to return the goods purchased will depend on the nature of the agreement and the parties to it). This is simple where a loan or credit facility has not yet been drawn down, or used to make payment, but is more complex where the agreement is in place and the credit provided has been used to purchase goods or services.

For home finance arrangements, the right of cancellation is replaced by a "period of reflection". The home finance provider must allow the customer a reasonable amount of time (the "period of reflection") in which to decide whether or not to take up an offer of home finance.

During this period, to ensure customers are not subject to undue pressure, the provider must not directly approach the customer (but may respond to their questions) and may not withdraw or amend the offer. This means that the process need not slow down transactions where the customer wishes to move more quickly without exposing the credit provider to additional risk. However, we also consider that there should be a limited right to cancellation after drawdown, in the event that the property transaction does not proceed, and the customer should be able to return the funds to the credit provider without prejudice or penalty.

Consultation questions

Respondents are asked to comment on:
13. Is the proposed approach to cancellation, cooling off and periods of reflection reasonable? If not, what alternative approach would respondents propose?

8.13 Early repayment

Customers have a right to make early repayment of a regulated agreement, which entitles them to repay in full the amount of credit provided and terminate the agreement without facing excessive fees or charges.

Lenders may decide if customers may make partial repayment of a credit agreement.

For consumer credit agreements other than home finance agreements, the cost of early repayment is capped at a maximum of 1 month's interest plus remainder of current payment period (i.e., a maximum of two (2) months' interest)[16]. Alternatively, lenders may adopt the approach set out in the UK Consumer Credit (Early Settlement) Regulations 2004.

Before entering into an agreement customers should be provided with a clear explanation of the costs that would be incurred as a result of early repayment, including the approach adopted for early repayment calculations.

It is important to avoid the situation where customers are deterred from early repayment due to the level of fees or where the customer is expected to remunerate credit providers (who receive early return of their funds and avoid the risk of late payment or default) for interest payments over the duration of the contract. For the avoidance of doubt, credit providers may not make charges to "recover" interest payments that would be received if the arrangement were to continue.

The consideration is different for home finance agreements where customers may, for example, enter into long term fixed or capped rate agreements. For such agreements the early repayment figure must be disclosed at the time the agreement is entered into. The cost may be linked to the remaining duration of any discount period or fixed term - up to a maximum of 1% for each year of early repayment.

Consultation questions

Respondents are asked to comment on:
14. Is the approach to early repayment of fees reasonable? If not, what alternative would respondents propose?

[16] The UK FCA uses a more complex formula to determine maximum permitted early repayment fees. The Consumer Credit (Early Settlement) Regulations 2004 (legislation.gov.uk)

8.14 Unfair contract terms

The Law includes powers for the Commission to determine whether contract terms, in regulated agreements, are fair.

The Commission proposes to broadly follow the approach adopted by the FCA in its approach to the UK's Consumer Rights Act 2015.

We will apply the principles of transparency and fairness and identify the types of terms which licensees must not use and should not use (blacklisted and greylisted terms).

Customer contracts should be expressed in plain and intelligible language which can be understood by customers, so that they can make informed choices as to whether or not to enter into a contract. The use of jargon, complex legal drafting or terms that have a meaning other than that in plain English could be considered unfair.

Contracts should be fair. They should not contain terms that create a significant imbalance in the parties' rights that is tilted against the customer or in favour of the trader/service provider. For example, an unfair term would allow the service provider to unilaterally cancel a contract without permitting the same rights to the customer or would increase charges or interest without permitting the customer to terminate the contract, or attach unreasonable penalties or fees.

With that aim in mind, we have identified specific terms which would always be considered unfair (blacklisted) or may be unfair (greylisted) and we require licensees to have due consideration to these terms in making contracts with customers.

In practice, without significant additional resources (and therefore fees to licensees) the Commission would not be able to enter detailed discussion with each licensee on the context of individual greylisted terms and whether or not they are appropriate. We therefore propose that such terms should not, as a matter of good practice, be used by licensees. If these terms are used, the licensee must maintain records of when and where they are used.

The blacklisted and greylisted terms will be set out in the Rules. They are the terms which we consider relevant to regulated agreements offered by credit providers in the Bailiwick, drawn from the long list of terms identified by the UK FCA and Competition and Markets Authority.

Consultation Questions

Respondents are asked to comment on:
15. Is the approach to unfair contract terms and greylisting reasonable? Are there any other specific terms which should be included or excluded from this list?

8.15 Forbearance and default

Firms shall apply appropriate forbearance for customers getting into financial difficulty due to unforeseen circumstances. This can include allowing deferral of repayments (payment holiday) in response to changes of circumstances, suspension of interest, switching to interest only home finance, rescheduling of payments, or extension of loan repayment periods to permit borrowers to repay their loans.

In the event of a default, lenders must take reasonable steps to accommodate customers in financial difficulty before terminating agreements or resorting to more drastic measures, such as exercising their rights over security or taking specific court action (including desastre/saisie).

Where a lender calls in its security against a loan, any surplus which it realises from the subsequent transfer or disposal of the asset, after discharging the debt and covering the lender's reasonable expenses, must be returned to the affected borrower. This does not reinstate any rights in respect of creditors who have, for example, waived rights under the saisie process.

Where a lender disposes of assets or property following such a process, they must make reasonable efforts to obtain the best value for those assets.

Consultation Questions

Respondents are asked to comment on:
16. Is the approach to forbearance and default reasonable? If not, what alternatives would respondents propose?

8.16 Private lenders & Appointed Service Providers ("ASPs")

Some Bailiwick individuals privately offer consumer credit or home finance to Bailiwick consumers. For the avoidance of doubt, lenders who charge interest or fees for credit, are acting "by way of business" and fall under the scope of Part II of the Law when entering into regulated credit agreements. The main exception to this is for loans to family members, and one-off loans to friends which do not incur interest or other charges.

For some, licensing requirements may be too onerous and disproportionate for the value of business conducted. Nevertheless, customers who enter into agreements with such credit providers are as deserving of protection as any other. In some cases, these customers can be more vulnerable than those who can obtain credit from mainstream lenders.

Therefore, the Commission proposes to consider an exemption for low volume, low value private lenders from the need to apply for a licence in their own right, provided that they engage someone to act on their behalf, who will take on responsibility and accountability for ensuring that the Rules in relation to regulated agreements and AML/CFT are met.

Bailiwick lenders wanting to make use of this exemption must apply to the Commission for a discretionary exemption, for which there will be an application fee. The Commission will assess the application, including whether the applicant is fit and proper. If the application is approved it will be subject to the lender meeting the following minimum conditions, on an ongoing basis –

- make available no more than 2 loans per annum;
- have a maximum loan portfolio of no more than £1m;
- comply with all the relevant Rules in respect of their lending to customers; and
- at all times have acting on their behalf an ASP, who is a licensed credit or ancillary service provider, who will be responsible and accountable for ensuring that LCF Rules are applied and AML/CFT requirements are met.

Lenders which do not meet these criteria will require a full licence under Part II.

Private lenders who conduct a larger scale business, (those offering more than 2 loans per annum or who lend more than £1m at any time) will need to apply for a licence in their own right. They may nevertheless sub-contract the management of the services they provide, including conduct and reporting, to another credit or ancillary service provider licensed under the Law. They must satisfy the minimum criteria for licensing in their own right and remain responsible for compliance with all of the applicable Rules, irrespective of any outsourcing.

Note that private lenders who do not carry out consumer credit or home finance activities are subject to the provisions of Part III of the Law. Those conducting a small value and volume of consumer credit and home finance, who have been granted an exemption from licensing for these activities, will still be required to hold a FFB licence if they engage in any other credit provision which requires a licence.

Consultation Questions

Respondents are asked to comment on:
17. Is it appropriate to allow small private lenders to be exempted from the requirement to hold a licence? If not, what alternative arrangement should be adopted?

Worked example – private lenders

<u>Private Lender – individual loans not a business</u>

I am a private lender providing a small number of loans to people on an individual basis. I do not consider this to be a business.

Am I caught by the Law?

Yes.
This type of lending arrangement is caught under the Law.
If you charge any form of interest or fees, then this activity is being carried out by way of business, and a licence is required.

You may apply for an exemption and the Commission will consider exempting you if you meet certain criteria. To do so you may offer only one or two loans each year and your total loan book has a value of less than £1m. You must continue to follow the Rules and offer the same consumer protections as other lenders and will be required to appoint another licensee (either a broker or lender) as your ASP, who will be responsible for ensuring that the Rules are followed. Decisions about lending remain with you as the lender.

If you do not have such an arrangement, or it is terminated, you will no longer benefit from the exemption and you will need to apply for a licence in your own right.

8.17 Appointed Service Providers ("ASPs")

The ASP, in submitting its annual return to the Commission, will need to provide details in respect of each lender for whom they carry out this function.

Decisions on lending and whether or not to enter into specific loan agreements will remain with the lenders themselves.

Appointed Service Provider Responsibilities

The ASP must:

- hold a licence under Part II of the Law as a credit provider in their own right or as a broker/ancillary service provider;
- have in place a written agreement with each private lender they represent;
- advise of significant changes in circumstances of private lenders;
- ensure that private lenders follow the Rules in respect of their lending agreements;
- provide annual returns in respect of the private lenders they represent; and
- provide any additional information requested by the Commission.

The ASP will be accountable for ensuring that the requirements are met, must ensure that the requirements of the POCL and the Handbook are followed, and must ensure that due diligence requirements are met in respect of their client lenders and borrowers.

The ASP must ensure it is satisfied that AML/CFT obligations, and all the relevant Rules, are followed in respect of regulated agreements. This will include information disclosure, interest rate calculations and ensuring creditworthiness/affordability checks are conducted as required. Should the customer fall into difficulty, the Rules on forbearance are applied.

Consultation questions

Respondents are asked to comment on:
18. Are the arrangements for Appointed Service Providers appropriate? If not, what alternative approach should be used?

Worked example - Appointed Service Provider

Appointed Service Provider

I am an Appointed Service Provider for one or more private lenders.

What are the requirements?
You must be licensed as a credit provider or credit broker in your own right in order to be an ASP under Part II of the Law.
You must have a written agreement with each private lender for which you are the ASP.
The private lender may be exempt from the need for their own licence, provided they meet the relevant criteria, apply for (and are granted) an exemption by the Commission.

What does it mean for me?
You are responsible for ensuring that customers are treated fairly and that the Lending, Credit & Finance Rules are followed. You will need to provide the Commission with:

- annual returns for each of the private lenders for which you are the ASP; and
- any additional information requested by the Commission.

Are there additional fees?
No. You are already licensed under Part II of the Law.
The private lender will need to apply for an exemption (if they meet the criteria).

Who is accountable if the Rules are broken?
You – as the ASP and licensee.

What if the lender terminates the agreement with the ASP?
You must inform the Commission. The lender's exemption is no longer valid. Without a licence in its own right, the lender is likely be in breach of the Law.

What if the lender does not follow the Rules – who is accountable?
You – as the licensed ASP – are accountable. You are responsible for ensuring the Rules are followed and the consequences of any breach will rest with you. The lender may also be in breach of the conditions of its exemption and will have to obtain a licence in its own right.

Can I provide the ASP service to other lenders?
Yes – but lenders with a loan book of more than £1m must be licensed in their own right. In these cases, the lender is accountable for ensuring the Rules are followed – and you would be a sub-contractor carrying out work on their behalf.

May I charge fees for this service?
Yes, you may charge for this service. Fees are not regulated, the type and structure of fees are for you to decide. BUT you may not charge fees directly to borrowers. Any fees passed on to customers must be included in the cost of credit and calculation of interest rates.

8.18 Arrangement for existing lenders which are in run-off

This section applies only to credit providers which are in run-off at the time of implementation of the Law. That is, credit providers with an existing book of loans or credit agreements who do not intend to conduct any new business in the Bailiwick.

This is particularly important for home finance arrangements. They are usually of longer duration and the terms may be revised, for example, to take account of changes in interest rates, or because the customer would like to switch from one type of arrangement to another (e.g., from a variable to fixed rate loan). When significant terms are amended this is usually considered a new regulated agreement and a licence would be required.

We recognise that requiring firms which are in run-off to apply for a full licence in respect to minor changes to agreements may be disproportionate and discourage them from permitting changes to agreements. This could be detrimental to customers, locking them into existing terms, or forcing them to switch providers and incur substantial costs in refinancing and re-bonding.

Therefore, the Commission proposes that the small number of firms already in run-off, should be exempted from the requirement to hold a C&F licence for a period of no more than 5 years. During this period firms would be expected to abide by the requirements of the rules and would be permitted to make changes for the benefit of (and with the agreement of) the customer.

This allows credit providers in run-down to permit customers to switch interest rates, to switch to new fixed rates, to make early repayment or where necessary to extend the term of repayment, without requiring them to apply for a licence provided that the terms of the contract are otherwise unaltered.

However, if the amount of credit is increased (other than to offer forbearance) or substantial changes are sought without agreement of the customer, the lender would be required to be licensed under Part II of the Law.

Consultation questions

Respondents are asked to comment on:
19. Is it reasonable to exempt firms in run-off and permit them to make limited contract changes? If not, what alternative approach should be used?

8.19 Fees and commission payments

For consumer credit agreements which are not home finance agreements, credit providers and ancillary service providers (brokers) must tell customers if they receive commission or a fee for a particular transaction. They are not required to disclose the amount (although they must disclose this if asked to do so).

For all home finance arrangements, home finance brokers and lenders are required to disclose the amount of commission/fees in the documentation provided to their customers.

Fee or commission arrangements which encourage a broker/intermediary to negotiate higher finance charges or interest rates (so-called "Difference in Charges" or "DIC" commissions) are undesirable and are not in the interests of customers. Such arrangements for fees or commission (or other arrangements which incentivise brokers to offer customers credit arrangements which have higher fees, interest or charges) are not permitted.

In order to prevent circumstances in which some customers may be subject to undue sales pressure, (the "end of month" effect) fees and commission arrangements may not include incentives that increase with the volume (amount) of credit provided by the broker.

For the avoidance of doubt, reference to "fees and commission" refers to any form of remuneration from the credit provider to the lender and any share of revenue from the customer, whatever form it may take, including any form of income, fee, emolument or other consideration in money or money's worth.

Fees or commission may be based on the total amount of credit, for example, a percentage of the amount advanced.

Consultation Questions

Respondents are asked to comment on:
20. Is the approach to fees and commission payments reasonable? If not, what alternatives would respondents propose?

9 Financial firm businesses - Part III FFB licensees

Firms identified and regulated as financial firm businesses or "FFBs" carry out a diverse range of business activities, which are listed below for ease of reference. All of these business activities would previously have been covered within the scope of the NRFSB Law.

The primary reason for regulating FFBs is to ensure that anyone carrying out the business identified in Part A of Schedule 1 to the Law is subject to the Bailiwick's AML/CFT regime, including obligations to identify and verify customers and maintain effective policies procedures and controls to ensure compliance with the relevant AML/CFT Laws, regulations and rules. It was a pillar of the States' Policy Letter of 2 December 2020 that registration under the NRFSB Law should be replaced by licensing and regulation under the Law. From Part A of Schedule 1 to the Law, the FFB activities are:

- *Lending (including, without limitation, the provision of consumer credit or mortgage credit, factoring with or without recourse, financing of commercial transactions (including forfaiting) and advancing loans against cheques).*

- *Financial leasing.*

- *Operating a money service business (including, without limitation, a business providing money or value transmission services, currency exchange (bureau de change) and cheque cashing).*

- *Buying, selling or arranging the buying or selling of, or otherwise dealing in, bullion or buying or selling postage stamps, except where –*

  (a) in the case of bullion, the business consists only of buying, selling or arranging the buying or selling of, or otherwise dealing in, bullion, where the value of each purchase, sale or deal does not exceed £10,000 in total, whether the transaction is executed in a single operation or in two or more operations which appear to be linked,

  (b) in the case of buying postage stamps, the business consists only of buying postage stamps where the value of each purchase does not exceed £10,000 in total, whether the transaction is executed in a single operation or in two or more operations which appear to be linked, and

  (c) in the case of selling postage stamps, the business consists only of selling postage stamps –

  (i) where the value of each sale does not exceed £10,000 in total, whether the transaction is executed in a single operation or in two or more operations which appear to be linked, or

  (ii) in the course of –

  (A) a postal services business carried on under the authority of a licence granted under the Post Office (Bailiwick of Guernsey) Law, 2001, or

  (B) a business authorised to sell postage stamps by the holder of a licence under that Law.

- *Facilitating or transmitting money or value through an informal money or value transfer system or network.*

- *Issuing, redeeming, managing or administering means of payment; and "**means of payment**" includes, without limitation, credit, charge and debit cards, cheques, travellers' cheques, money orders, bankers' drafts and electronic money.*

- *Providing financial guarantees or commitments.*

- *Trading (by way of spot, forward, swaps, futures, options, etc.) in –*

  (a) money market instruments (including, without limitation, cheques, bills and certificates of deposit),
  (b) foreign exchange, exchange, interest rate or index instruments, and
  (c) commodity futures, transferable securities or other negotiable instruments or financial assets.

- *Participating in securities issues and the provision of financial services related to such issues, including, without limitation, underwriting or placement as agent (whether publicly or privately).*

- *Providing settlement or clearing services for financial assets including, without limitation, securities, derivative products or other negotiable instruments.*

- *Providing advice to undertakings on capital structure, industrial strategy or related questions, on mergers or the purchase of undertakings, except where the advice is provided in the course of carrying on the business of a lawyer or accountant.*

- *Money broking.*

- *Money changing.*

- *Providing individual or collective portfolio management services or advice.*

- *Providing safe custody services.*

- *Providing services for the safekeeping or administration of cash or liquid securities on behalf of customers or clients.*

- *Carrying on the business of a credit union.*

- *Accepting repayable funds other than deposits.*

- *Otherwise investing, administering or managing funds or money on behalf of other persons.*

This corresponds to the list of activities previously covered in the scope of the NRFSB Law.

Licensing of FFBs

Under the new arrangements, FFBs must meet the minimum criteria for licensing (including acting in accordance with the *Principles of Conduct of Finance Business*), follow the relevant conduct Rules and comply with the *Handbook on Countering Financial Crime and Terrorist Financing*. The MCL includes provisions to ensure that licensees hold appropriate capital (adequate resources to finance the business) and insurance.

Anyone carrying out these activities by way of business in or from within the Bailiwick with or on behalf of a customer is classed as an FFB. They will need a licence unless they are a regulated business, already licensed under one of the regulatory Laws or under Part II of this Law or are otherwise exempted. The regulated businesses which are exempted are listed in Part B of Schedule 1 of the Law and has been extended from the schedule to the NRFSB Law to include collective investment schemes authorised or registered under the POI Law.

There is also an exemption set out in section 20 of the Law ("Exempted financial firm business") where the total turnover in respect of FFB activities is less than £50,000 per annum, occasional transactions do not exceed £10,000, and all the following criteria are met:

(a) the total turnover in respect of financial firm business of the person carrying on the business in question does not exceed £50,000 per annum,

(b) the business in question does not carry out occasional transactions, that is to say, any transaction involving more than £10,000, carried out by the business in question in the course of that business, where no business relationship has been proposed or established, including such transactions carried out in a single operation or two or more operations that appear to be linked,

(c) the business in question does not exceed 5% of the total turnover of the person carrying on the business,

(d) the business in question is ancillary, and directly related, to the main activity of the person carrying on the business,

(e) the business in question does not facilitate or transmit money or value by any means,

(f) the main activity of the person carrying on the business in question is not that of a financial firm business, and

(g) the business in question is provided only to customers of the main activity of the person carrying on the business and is not offered to the public.

To avoid duplication, a further exemption is envisaged for VASPs, licensed under Part III of the Law, since their licensing requires them to comply with all relevant AML/CFT obligations.

Commercial (non-consumer) lending

During discussions with stakeholders, it was noted that there may be a number of firms carrying out commercial lending and individuals providing loans to businesses who are not currently registered under the NRFSB Law and are not otherwise licensed. It is not clear why such lenders have not previously been registered. Some may qualify for exemption (as set out previously) because the total income from FFB activities is less than £50,000 per annum and occasional transactions do not exceed £10,000 in value (and the other criteria are met) but

others are likely to be covered by the relevant AML/CFT requirements and would be classed as FFBs within the scope of the Law. This imposes additional obligations in relation to licensing as set out above.

The Commission would like to understand whether a significant number of lenders are affected, the degree to which lending is a core part of their business (to what extent this will impact their underlying business) and how they currently satisfy any requirements in respect of AML/CFT for lending arrangements. We would welcome detailed feedback from firms or individuals directly affected by these issues.

On receipt of feedback to this consultation, the Commission will consider whether there is a need to modify the scope of existing exemptions. This would include consideration of whether it would be sufficient or appropriate to consider individual exemptions, on a case-by-case basis on application by lenders or if some form of alternative arrangement might be required to permit lenders to meet their obligations. This could involve setting up an alternative arrangement for such lenders as a whole. Any such amendments would be dependent on ensuring that the appropriate AML/CFT safeguards can be applied or that risks are sufficiently mitigated.

Guidance for specific categories of FFB

1. Lending FFBs

This category of FFB covers all types of lending carried out in or from within the Bailiwick. Businesses which offer consumer credit or home finance in addition to other types of lending and are licensed under Part II do not require a licence as an FFB. A holder of a Part II licence does not also require a Part III (FFB) licence in order to carry out commercial lending or other types of FFB activity but will need to follow the relevant Rules. At the time of publication there are no specific additional Rules in respect of FFBs (but that may change if Rules are revised in the future).

Other licensees may also be exempt from the requirement to hold a licence under Part III of the Law for their lending activity. For example, holders of a banking licence do not require a Part III licence in order to carry out such lending or any other FFB services.

Intra-group lending by administered entities within the same structure, or with the same beneficial owner, does not require a licence under the Law. The administrating fiduciary is responsible for customer due diligence and compliance with AML/CFT for such transactions.

Note: Holding an FFB licence under Part III does not permit the licensee to carry out consumer credit or home finance activities without a Part II licence.

2. Payment service providers

Most people will be familiar with payment service providers through brands such as PayPal, Worldpay, Stripe, Zettle and Square, which provide payment services through websites or via card readers used by retailers. These services are used by businesses in the Bailiwick, although the providers themselves are not based here. Their customers are the merchants

and retailers that rely on the services and pay a fee or percentage of turnover to the provider, rather than the consumers who make payments over these systems.

Consumers and merchants do not require a licence or registration to make use of these services and nothing in the new legislation will require them to do so.

Payment service providers are a type of "money service business", which includes services providing money or value transmission as well as currency exchange and cheque cashing. The services are generally authorised and regulated in the UK or elsewhere in Europe and would only be subject to licensing under the Law if they target customers (i.e., merchants and retailers) here or operate from within the Bailiwick.

Payment service providers based overseas can provide services to merchants and retailers in the Bailiwick who approach them (often referred to as "reverse solicitation") or who use them as part of an overall package of services, without being licensed or registered with the Commission, provided that they do not specifically target customers in the Bailiwick.

A payment service provider based in the Bailiwick or specifically targeting local customers must (currently) register as an NRFSB and will need a licence under the Law. A licence will be required by anyone who wants to set up a branch in the Bailiwick or to target local customers (e.g., by advertising in local media, such as the Guernsey Press or on the radio). A licence is not needed by businesses based outside the Bailiwick who acquire local customers through advertising in national (UK) media, on websites or through social media.

The requirements for licensing of payment service providers and local branches of money service businesses are set out in the Law and the draft Rules. They include the requirement to have substance locally, in the form of at least two persons directing the business who are based in the Bailiwick, and to have appropriate resources for the operation of the business.

At this time there are no additional conduct Rules for particular classes of FFB, but they will need to follow Rules which apply to licensees generally, including those relating to Bailiwick residence, requiring at least two individuals directing the business to be based in the Bailiwick.

Consultation questions

Respondents are asked to comment on:
21. Is the approach to regulating FFBs reasonable to meet the licensing requirement? If not, what alternative approach should be used?
22. If you provide loans to businesses, to what degree is lending part of your core business, and how do you satisfy AML/CFT obligations? What impact will licensing have on this aspect of your business in future?
23. Are there specific Rules that should be applied to certain types of FFB? If so, what rules should apply?
24. Is it reasonable to exempt authorised/registered collective investment schemes from the need for an individual licence?
25. Is it appropriate to exempt administered entities in respect of intra-group lending within an administered structure from the requirement for licensing?

10 Financial Technology ("FinTech")

Sections 10 and 11 of the CP deal with the parts of the Law concerning the licensing of Fintech firms. Unlike the earlier sections that aim to introduce a consumer protection regime for business that is already being carried out in the Bailiwick, these parts of the Law are more forward looking. Their aim is to put in place a regulatory framework that will enable high quality digital and Fintech businesses to establish themselves in the Bailiwick.

The Commission supports innovation in financial services as it can lead to new types of businesses or improvements to the quality of products and services available to customers. For example, the Commission operates an Innovation Soundbox to provide early-stage assistance to innovative firms considering applying for a licence.

While there are benefits to innovative business models, they can also present risks. Digital and fintech businesses, in particular, can be subject to new or increased forms of money laundering and terrorist financing risks. In order to realise the benefits of innovation it is important that these risks are identified and controlled. This is what the Commission's draft Rules are aiming to achieve.

11 Virtual asset service providers - Part III VASP licensees

11.1 Introduction

This section will set out and seek input on: the Commission's proposals regarding the scope of the licensing regime; potential exemptions from licensing; the licensing process; environmental disclosures; and the Commission's appetite for licensing VASPs.

In licensing and regulating VASPs, the Commission's aim is to ensure that money laundering/terrorist financing risks are appropriately managed and mitigated, in line with FATF standards and guidance in this area, and that any VASPs carrying out business in or from within the Bailiwick are run in a prudent manner by fit and proper individuals, to the same standards of governance and conduct as other regulated businesses.

11.2 Application of the regime

The majority of virtual assets exhibit high price volatility. In addition, much of the trading in virtual assets occurs on unregulated exchanges. As a result, it is difficult to be confident that the price of a particular virtual asset represents a genuine market price or value. There are also frequent news reports of hacks, thefts, scams, frauds and 'pump-and-dump' schemes happening in the virtual asset space.

These issues present significant risks for consumer and investor detriment. Many of these risks are present within the wider international virtual asset market. As noted earlier, virtual assets also present significant money laundering, terrorist financing and other financial crime risks, such as fraud.

The Financial Services Commission (Bailiwick of Guernsey) Law, 1987 sets out the Commission's functions. These include countering financial crime and maintaining confidence in the Bailiwick's financial services sector. In carrying out these functions, the Commission is required to have particular regard to protecting the public interest, including protecting the public from financial loss due to dishonesty, incompetence or malpractice and the protection and enhancement of the reputation of the Bailiwick.

Given the issues and risks outlined above, allowing VASPs operating and licensed in the Bailiwick to carry on business with the retail public (including those that are "high net worth" or would be regarded as "professional investors" in a different context) would not align with the Commission's objectives.

VASPs that provide services solely to wholesale and institutional counterparties may be licensed, as these counterparties should be better able to understand the risks involved and able to bear the downsides. The Commission would expect such VASPs to be able to demonstrate how they would meet the MCL, particularly in relation to having appropriate skills and knowledge within the Bailiwick and applying robust anti-money laundering and countering terrorist financing controls. The Commission will place great importance on VASPs maintaining a significant physical presence in the Bailiwick.

11.3 Scope of the licensing regime

There is a wide range of activities being carried out in the virtual asset space and these activities are constantly evolving and changing. As such, the Commission intends to broadly interpret the definition of virtual assets and VASP activities set out in the Law. This is to ensure that emerging products and services are appropriately captured. The proposed Rules and guidance include further details on how the Commission intends to apply the definitions, which aligns with the FATF guidance on virtual assets.

Because the scope of the licensing requirements is intentionally wide, some businesses or activities may be caught within it that the Commission does not intent to regulate. As such, the Commission proposes to exempt certain activities and entities from the licensing requirements and to also clarify which activities are not carried out by way of business. This is detailed later in the paper.

Given the wide range of virtual asset activities, below is a summary of the Commission's proposed approach to some of the more common types of virtual asset or virtual asset activity:

Mining

Mining refers to the process by which transfers and transactions are validated and confirmed for blockchain-based virtual assets. Using Bitcoin as an example, when someone wants to transfer Bitcoin from one address to another, they broadcast a message to the Bitcoin network. Miners then select from the pool of un-validated messages, check that the message meets the rules of the network (i.e., the payer has enough Bitcoin for the transfer) and form them into a block of messages. This involves the active selection, by the miner, of what messages to include in the next block, although this is usually based on the transaction fee attached to the message. Different miners can select different payment messages to be included in the next block. Which block gets added to the blockchain and therefore which payments are validated depends on which miner completes the validation process first. In the case of Bitcoin, this validation process is called proof of work ("PoW").

PoW involves carrying out lots of simple calculations very quickly, and essentially trying to guess a number that, when combined with the data in the block, produces a specified output. This uses significant amounts of computational power. Whichever miner produces the required output first has their block added to the blockchain and receives the mining reward. This reward consists of an amount of newly created Bitcoin.

Because PoW requires large amounts of computing power, and therefore electricity, it is affected by economies of scale and thus tends to centralise. Due to this, individuals will generally contribute their computing power to a larger mining pool. These pools are controlled by a company that decides which blocks to mine and distributes mining rewards to contributors. It is worth noting that almost all Bitcoin mining is carried out by commercial entities using specialised hardware as home PCs are no longer efficient enough to compete. However, this is not necessarily the case for other crypto assets, such as Ethereum.

There are other forms of validation or mining processes, including proof of stake ("PoS"). Under PoS validators must 'stake' or lock-up part of their holdings in the virtual asset whose transactions they are validating. There is a process by which the validator can lose the stacked virtual assets if they maliciously validate a block. In most cases, the validator for a particular

block is randomly selected from the pool of available validators, with a weighting based on the amount of virtual assets that each validator has stacked. PoS can use significantly less energy than PoW and may be less environmentally harmful. However, it does have the same issues around concentration and centralisation, as the more virtual assets you stake, the more likely you are to validate a block and thus receive more virtual assets.

The act of mining itself is not explicitly covered by the list of VASP activities in the Law. However, it is likely that the controller of a mining pool would require a VASP licence as they are highly likely to engage in VASP activities by way of business, including transferring shares of mining rewards to contributors to the pool and potentially safe-keeping and/or administration.

As the controller of a mining pool is, in practical terms, validating and processing payments, if they were not required to hold a Part III VASP licence then they will require licensing as an FFB, as they would be carrying out the activity of "facilitating or transmitting money or value through an informal money or value transmission system or network", as set out in Schedule 1 to the Law.

So-called "stablecoins"

"Stablecoin" refers to a type of virtual asset that is intended to maintain a stable value, relative to a specified reference, usually a fiat currency. Most "stablecoins" that have seen widespread adoption have been pegged to the US Dollar, for example.

Most examples of stablecoins use one of two different mechanisms to maintain their reference value. The first is for the issuer to hold some form of reserve that is meant to back each stablecoin they issue on a one-for-one basis and, in theory, allow the virtual assets to be redeemed at par. A notable risk with this approach is that some stablecoin issuers do not transparently disclose the make-up of their reserve.

The second commonly used method is essentially a form of market arbitrage, often involving a second virtual asset produced by the issuer that has a floating value. The method is roughly analogous to how exchange-traded funds maintain their peg to net asset value.

Operating or administering a stablecoin will require a licence under the Law.

Non-fungible tokens ("NFTs")

NFTs are a subset of virtual assets. The key difference is that each NFT is unique and distinct, unlike, say, Bitcoin, where one Bitcoin is interchangeable with another (in the same way that a pound is interchangeable with another pound). NFTs are currently mainly used in connection with digital artwork, but other uses may arise.

The Commission does not intend to treat NFTs differently than any other kind of virtual asset in terms of licensing requirements.

Decentralised autonomous organisations ("DAO") and decentralised finance ("DeFi")

A DAO is an organisation or group whose governing rules and procedures are defined by programs running on a blockchain. In most cases, members of the DAO are issued with virtual assets that allow them to vote on the activities of the DAO, with the underlying program automatically carrying out the activity with the most votes. The aim of DAOs would appear to be the recreation of corporations, and the issuance in voting shares in said "corporations", while sitting outside of the legal and regulatory frameworks that normally govern such activities.

Creating a DAO generally involves creating and issuing the virtual assets that are used to vote on its activities and then transferring them to members. It is therefore highly likely that this would constitute carrying out VASP activities and would require a licence.

DeFi refers to financial products and services, generally denominated in virtual assets, that are provided by a blockchain-based, automated program, instead of by an intermediary or other firm. Often, they resemble lending products, but there are other applications. DeFi applications enable the automated and anonymous transfer of value. As such, they create significant money laundering and terrorist financing risks. They also have the potential to expose their users to significant loss. As such the Commission does not propose licensing providers of DeFi applications.

A common element of both DAOs and DeFi is the claim that they are "decentralised", that is to say, not controlled or governed by any one group or individual and therefore there is no individual or group responsible for its actions. This is broadly analogous to a publicly traded company claiming that no one is responsible for its actions as its shares are widely distributed. As with the Board of a public company, in almost all cases there is a group or individual that is, in practical terms, able to exercise control over the DAO or DeFi application and may therefore be carrying out VASP activities.

To be clear, developing a program or piece of software that enables a DeFi application or a DAO does not, by itself, constitute carrying out VASP activities and therefore would not require a licence. Operating that software within the Bailiwick to carry out VASP activities would, however, require a Part III VASP licence and as stated above the Commission does not propose to licence those operating DeFi applications.

11.4 Activities that are out of scope

The Commission proposes to exempt the following types of persons and activity from requiring a Part III VASP licence under the Law:

- Persons (including collective investment schemes) holding virtual assets solely for investment purposes
  It is not the Commission's intention to regulate individuals and other persons who invest in virtual assets on their own account.

  As a result, the Commission intends to issue a direction under section 90 of the Law that states that a person holding or trading in virtual assets, solely for investment or speculation purposes, on their own account, would not constitute acting by way of business in the context of section 17 of the Law.

This would cover private individuals who choose to invest in virtual assets, authorised or registered collective investment schemes that hold virtual assets as part of their asset allocation and businesses that invest in virtual assets.

This exemption would not apply to a firm that offers products or services related to virtual assets.

- Licensed fiduciaries and fund administrators
  If a company or structure administered by a licensed fiduciary or fund administrator chose to hold virtual assets then it is likely that the administrator would end up carrying out one or more of the VASP activities, particularly transfer, exchange and safe-keeping and/or administration in the normal course of business.

  The Commission proposes to exempt (under section 40 of the Law) licensed fiduciaries and fund administrators from requiring a Part III VASP licence when they carry out VASP activities on behalf of a client structure, provided that structure holds a VASP licence itself, or is subject to an exclusion or exemption from requiring a VASP licence. This is because the licensed fiduciary or fund administrator is already licensed and must apply AML/CFT measures.

  In such a situation, the client structure itself may require a licence if it is carrying out VASP activities beyond investing in virtual assets for its own account or is otherwise exempt.

The Commission also proposes to include the following guidance within the draft Rules:

"A merchant that accepts payment for goods or services in virtual assets or a charity that accepts donations in virtual assets is not carrying out a VASP activity, however the firm that facilitates the payment between the purchaser of the goods or service and the merchant is likely to be carrying out VASP activities. Businesses and charities that accept virtual assets should take care that they are not used as a means to exchange virtual assets into fiat currency by, for example, bad actors making multiple purchases or transactions in virtual assets then requesting refunds in fiat.

For the avoidance of doubt, virtual assets do not include –

- a transaction in which a person grants value as part of a store or gift card, affinity or rewards programme, where said value cannot be taken from or exchanged with the person for legal tender, bank credit or any digital asset; or
- a digital representation of value issued by or on behalf of a publisher of games and used solely within an online game, game platform, or family of games sold by the same publisher or offered on the same game platform.

The above bullet points should be read as a general description and guide, not a strict definition as there may well be a number of 'on the edge' cases. If in doubt, firms should contact the Commission."

Consultation questions

Respondents are asked to comment on:
26. Is the Commission's approach to exemptions for VASP activities reasonable? Are there activities which should be added or removed from the proposed exemptions?

11.5 Licensing process

The Commission intends to use its Soundbox approach when considering potential VASP licensees. As part of this process, when the Commission initially grants a licence to a VASP applicant, it will, in most cases, have a limited duration and may be subject to a number of conditions.

These conditions may include (without limitation) the following examples:

- restrictions on the volume of business the firm can carry out;
- restrictions on the kinds of business the firm can carry out;
- more frequent reporting requirements; and
- additional capital and liquidity requirements.

Following the completion of the initial period of licensing, the Commission will decide whether to renew the licence, how long for and whether to amend any of the restrictions.

Given the diverse nature of potential VASP business models and activities, as part of this process the Commission may set additional requirements based on the business model and risk profile of potential licensees. Capital requirements and Rules for a virtual asset exchange are likely to be very different to those for a virtual asset custodian, for example.

11.6 Environmental disclosure

Many virtual asset networks are extremely energy intensive. For example, the Bitcoin network alone uses between 134.86 Terawatt-hour ("TWh")[17] and 204.5 TWh[18] of electricity annually, equivalent to a small or medium sized industrialised nation. It is important that VASP licensees are transparent about the environmental impact of their virtual asset activities, particularly in light of the commitments made by the international community, including the States of Guernsey, to reaching net zero emissions by 2050.

The Commission therefore is proposing Rules that will require all Part III VASP licensees to publicly disclose the environmental impact of their virtual asset activities on an annual basis. These disclosures would include estimates of both the energy consumption and the carbon emissions of these activities. Please see Rule 10.4 for further details of the proposed requirements.

[17] Cambridge Bitcoin Electricity Consumption Index (CBECI) (ccaf.io)
[18] Bitcoin Energy Consumption Index - Digiconomist

Consultation questions

Respondents are asked to comment on:
27. Do you agree with the proposed environmental disclosure Rules for VASPs? If not, what disclosure rules should be applied?

11.7 Governance and substance

Governance requirements are a key part of the Commission's regulatory regime. All VASP licensees will be required to comply with the MCL, as with any other licensee. In addition, given the relatively new and fast changing nature of virtual assets, the Commission is proposing additional requirements concerning maintaining substance within the Bailiwick and limiting outsourcing to persons outside of the Bailiwick. This is to ensure that there is appropriate oversight and control of the licensee's activities. These requirements are set out in Rules 2.2 and 2.12.

Consultation questions

Respondents are asked to comment on:
28. Is the Commission's proposed approach to substance and outsourcing reasonable? If not, what alternative approach should be adopted?

12 Crowdfunding & peer to peer (Part IV)

This is not, at present, a significant sector in the Bailiwick. Broadly it refers to crowdfunding and peer to peer service providers which operate some form of electronic platform or other service to "matchmake" between investors and investment opportunities. It also includes "alternative financial intermediation" for future services which are yet to be defined.

Historically, one reason such businesses have not chosen the Bailiwick as a jurisdiction is the absence of a licensing and regulatory framework.

The rationale for licensing such services is to protect the reputation of the Bailiwick by ensuring that the service providers operating in or from within the Bailiwick, who serve customers locally and overseas, have appropriate processes, safeguards and resources in place in order to provide such services.

A licence under Part IV of the Law only covers the operation of the platform itself, not any other regulated activity.

As described by the Law, peer to peer platforms are marketplaces where borrowers and lenders can be matched. This could be something similar to a bulletin board, where lenders post the terms on which they are prepared to lend, or it could involve a more complex system that automatically matches lenders and borrowers based on the information they provide.

If the lending arranged through a platform constitutes a regulated agreement (i.e., consumer credit or home finance on Bailiwick residential property) then the platform operator will be required to ensure that the Commission's Rules regarding regulated agreements are followed.

It is important to note that lending through a peer to peer platform does not change the requirements for credit providers and lenders to be licensed under Part II or Part III of the Law.

Crowdfunding platforms are marketplaces that match those seeking to raise money or other finance with those that wish to provide finance. They differ from peer to peer platforms as the money can be raised through the issue of shares and other equity investments, in addition to borrowing. In practice, crowdfunding arrangements can involve the pooling of funds from multiple investors which is then invested or lent out by the platform. In these cases, the platform operator will need the appropriate licence to carry out that activity. For example, if the funds were lent out, the platform operator would need a Part II licence if the loan was a regulated agreement or a Part III FFB licence otherwise.

The potential requirement to hold multiple licences should not increase the ongoing cost of operating a platform. As noted in the later section of "Fees", firms with multiple licences under the Law will only have to pay the highest applicable annual licence fee for the various activities it is carrying out which fall within the Law.

While the Commission is not proposing to regulate the investments offered by platform operators, there will be some investor safeguards. The service provider is required to provide safeguards for investors to limit an individual investor's overall exposure (across platforms/investments) to such arrangements to no more than 10% of their net worth in total.

The Commission's Rules include high level requirements specifying the kind of information that platform operators will need to provide to all parties who use their platform. Specific or detailed requirements would not be appropriate due to the many different types of arrangement that could be made through a platform.

While the requirements are straightforward to apply in respect of service providers which operate an electronic platform and/or web based arrangements for such services, in order to ensure that there is a level playing field, and that there is no disincentive for electronic service providers compared to non-electronic service providers (i.e., those who may operate an informal or back office/paper based arrangement), these provisions apply to all providers, regardless of the mechanism used to provide crowdfunding/peer to peer matching services.

Consultation questions

Respondents are asked to comment on:
29. Is the approach to regulating peer to peer and crowdfunding services reasonable? If not, what alternative approach should be adopted? **30. Is it reasonable to limit investment to 10% of an individual investor's net wealth?** If not, what alternative limits should apply.

13 Approach to supervision

The Commission operates a risk based supervisory approach with all of the firms it authorises. The same will be true for those firms who will be licensed under the Law.

The Probability Risk and Impact SysteM ("PRISM") provides the Commission with its structured framework for risk-based supervision in the Bailiwick.

Under PRISM, the most significant firms, i.e., those with the ability to have the greatest impact on financial stability and the consumer, will receive a higher level of attention from the Commission under structured engagement plans, leading to early interventions with an aim to mitigate risks. Conversely, those firms which have the lowest potential adverse impact will be supervised reactively or through thematic assessments. Individual impact ratings remain confidential between the firm and the Commission.

More detailed information regarding the Commission's regulatory framework and its supervisory approach has been published on the Commission's website.

14 Information reporting

Key data will be requested as part of the application, some of which will be requested on an ongoing basis as part of an annual return. An indication of what will be required going forward is included in the application forms, links to which are provided in the following section.

Going forward, all firms licensed under the Law, with the exception of those solely licensed for the provision of services ancillary to credit, will also be required to submit audited financial statements as part of their annual return.

Consultation questions

Respondents are asked to comment on:
31. Is the Commission's proposed approach to information reporting reasonable? If not, why not? And what alternative approach should be adopted?

15 Applications

15.1 Who would need to apply?

A firm would require a licence under the Law for the following activities -

- Credit provision
- Services ancillary to credit
- Financial firm business
- Virtual asset service provider
- Financial platform and intermediation

Firms who already hold a licence under an existing regulatory Law and carry on, or intend to carry on, credit business, services ancillary to the provision of credit, financial platform and intermediation and/or VASP activities will also need to apply for a licence under the Law.

Firms who already hold a licence under an existing regulatory Law and who carry on, or intend to carry on, financial firm business are not required to apply for a licence under the Law, as they are already required to meet the minimum criteria for licensing under the regulatory Law through which they are licensed, and comply with the requirements of the Handbook.

Firms currently registered as NRFSBs for the activity of lending will need to either apply for a licence to carry on credit business (Part II) or apply for a licence to carry on financial firm business (Part III), as appropriate. All other current NRFSBs, as relevant, will need to apply for an FFB licence. Registration as an NRFSB will cease once the Law becomes effective on 1 July 2023.

Some firms may be eligible for an exemption from licensing under one or more categories of licence under the Law, as noted throughout this CP. In most cases (where the Commission issues classes of exemptions) the firm will not be required to apply to, or notify, the Commission in order to utilise an exemption from licensing. However, some specific exemptions are an exception to this general rule.

Firms may apply to the Commission for discretionary exemption from the requirement to be licensed, which is considered on a case-by-case basis (please see section 6 for more information in this regard). A firm may apply for discretionary exemption where it conducts activity that would ordinarily fall within the scope of licensing under the Law and is ineligible to utilise one of the classes of exemptions described within this CP but considers that the granting of a licence would be unduly burdensome, may be detrimental to the Bailiwick or the Commission's functions, and/or where AML/CFT risks are low, etc. Submission of a discretionary exemption request may incur a fee. Use of a discretionary exemption is subject to the Commission's written approval.

As noted within the "Private Lenders & Appointed Service Providers" section of this CP, the Commission proposes to consider exempting low volume, low value private lenders from the need to apply for a licence in their own right, provided that they comply with the relevant Rules and engage an ASP. Lenders wishing to be granted such an exemption will be required to apply for a discretionary exemption, for which there may be a fee.

Credit business firms who hold relevant permissions in a jurisdiction designated as having equivalent consumer protection provisions to those to be introduced by the Law will not be required to be licensed under the Law unless they have a physical presence in the Bailiwick. Instead, these businesses will be required to notify the Commission that they are offering their services to Bailiwick consumers and, if required, provide the Commission with further information. For the avoidance of doubt, an equivalent firm can be exempted from Part II licensing but still be required to hold Part III and/or Part IV licences, if applicable.

15.2 New licence applications

General information regarding the Commission's approach to new applications can be found on the Commission's website, via the "Information for Applicants" page.

The content of an application pack will vary depending on the nature of the business activity being undertaken. Broadly, application packs will be required to contain the following:

- explanatory covering letter stating the rationale for the application submission;
- application form (example forms attached to this CP) –
    - all applicants will be required to answer the common question set (see the "general application form");
    - applicants will also be required to submit answers to a question set, or multiple question sets, specific to the activities to be undertaken (see the "activity-specific annex(es)");
    - existing businesses will also be required to submit a supplementary information form relevant to each activity-specific annex completed. The purpose of this is twofold: the information will allow the States of Guernsey and the Commission to gauge the existing population of firms undertaking LCF activities within the Bailiwick, and it will help guide the Commission's approach when supervising these businesses prior to them submitting their first annual return (see the "supplementary information forms");
- application fee – fees are outlined in more detail later;
- copies of the documents requested as part of the application form; and
- Online Personal Questionnaires ("OPQ") and Online Appointments ("OA") – to be submitted through the Commission's Online PQ Portal for key personnel fulfilling duties in the following categories -
    - Controller;
    - Compliance;
    - Governance; and
    - Manager

15.3 Timeframes and deadline

The Commission proposes to accept licence applications from 1 January 2023, ahead of the regime coming fully into effect on 1 July 2023.

The Commission would aim to grant a licence in principle within 60 days of receipt of a fully completed application pack. We will advise if the submission requires further expansion or clarification. Please note that the response time may be substantially longer depending on the quality and completeness of the application pack.

The deadline for obtaining a licence under the Law, if so required, will be 30 June 2023 with licences becoming effective from 1 July 2023.

In the event that a firm has not been granted the licence it requires by this date, it would need to cease that activity until it is licensed, which is why early submissions are being encouraged. Please see section 16.2 for further details in this regard.

The Commission welcomes open and transparent communication with all potential applicants to enable effective and timely decisions on licensing and ongoing supervision.

15.4 Queries in relation to licensing applications

If you wish to provide input to the consultation in relation to licensing requirements and the application process, please submit these in response to the CP.

Once the consultation has closed, and if you have any queries with regard to the submission of an application please, in the first instance, refer to the relevant page of the Commission's website or submit your query by email to lcf@gfsc.gg.

Consultation questions

Respondents are asked to comment on:
32. Is the Commission's proposed approach to applications reasonable? If not, why not? And what alternative approach should be adopted?

16 **Fees**

The below fee information is provided for information purposes. The fees for LCF licensed activities are being consulted on separately as part of the Commission's general fees consultation process.

If you have specific comments on the level or nature of fees, please respond to the separate fees consultation – and please indicate if you have done so in your response to this paper.

16.1 Annual fees

Those licensees authorised to conduct multiple activities under the Law will only be required to pay a single fee. That fee would be the highest of the fees relating to the activities the licensee is authorised to conduct.

Those licensees separately licensed under another regulatory Law will be required to pay the relevant annual fee subject to the following exceptions -

- firms licensed under any other regulatory Law will not require further licensing to carry out FFB activity (as is currently the case with NRFSBs) and will not be required to pay a fee; and

- banking licensees will receive a 50% discount to their LCF annual fee. This reduction is due to the substantial annual banking fee already charged and the overlap in supervision when considering the credit book of a banking licensee.

Licences granted by 1 July 2023 will be subject to a pro-rata annual fee.

16.2 Application fees

All firms conducting regulated activity will be required to apply for a licence under the Law. There is to be no grandfathering.

It is proposed that an application fee equal to the annual fee of the relevant regulated activity is charged. For those entities conducting multiple activities, this will be a single fee in line with the highest of the applicable fees.

In order that the Commission may review and consider applications by firms ahead of the proposed implementation date, the Commission considers it imperative that comprehensive and accurate applications for licensing are received early in the application window. It is therefore proposed that a discount of 50% will be applied to all comprehensive and accurate applications received by 28 February 2023. All other applications will be charged the full application fee.

If an application is received after 31 March 2023 the Commission cannot guarantee that the licence will be granted by 1 July 2023.

If an entity currently licensed or registered under a regulatory Law is not granted a licence by 1 July 2023, it is possible that a temporary licence may be granted. A temporary licence would allow the entity to continue to operate for a period until a full licence is granted. A temporary licensee would be charged a full annual licence fee (rather than pro rata).

16.3 Regulatory fees – credit and finance sector

Application fees:	**Proposed fee for 2023**
Credit providers	
Home finance	£6,000
Consumer credit	£4,500
Services ancillary to credit	
Home finance	£4,500
Consumer credit	£4,500
Financial firm businesses	£4,500
Platforms	£6,000
VASPs	
Exchanges and stablecoin issuers	£150,000
Non-exchanges*	£25,000
Application for an extension of a licence	£1,245
Application for a change of controller	£2,250
Application for an exemption - individual	£525
Application for an exemption - company or partnership	£1,175

* Examples of non-exchange VASPs can be found in section 4.6

Annual licence fees:		**Proposed fee for 2023**
Credit providers		
Home finance	< £100m lending book	£6,000
Home finance	> £100m lending book	£9,000
Home finance	< £100m lending book (Bank)	£3,000
Home finance	> £100m lending book (Bank)	£4,500
Consumer credit	< £10m lending book	£4,500
Consumer credit	> £10m lending book	£7,500
Consumer credit	< £10m lending book (Bank)	£2,250
Consumer credit	> £10m lending book (Bank)	£3,750
Services ancillary to credit		
Home finance		£4,500
Consumer credit		£3,000
Financial firm businesses		£1,500
Platforms		£6,000
VASPs		
Exchanges and stablecoin issuers		£150,000
Non-exchanges*		£25,000

* Examples of non-exchange VASPs can be found in section 4.6

17 Appendix 1: Glossary

Acronym	Description
AML/CFT	Anti-Money Laundering/Countering the Financing of Terrorism
APR	Annual percentage rate
ASP	Appointed service provider
B2B	Business-to-business
the Bailiwick	The Bailiwick of Guernsey
BNPL	Buy now, pay later
the BSL	The Banking Supervision (Bailiwick of Guernsey) Law, 2020
LCF	Lending, Credit and Finance
the Commission / GFSC	Guernsey Financial Services Commission
CONC	The FCA's Consumer Credit sourcebook
CP	Consultation paper on The Lending Credit & Finance (Bailiwick of Guernsey) Law, 2022, implementation and Rules
DAO	Decentralised autonomous organisation
DeFi	Decentralised finance
DIC	Difference in charges
the Enforcement Powers Law	The Financial Services Business (Enforcement Powers) Bailiwick of Guernsey) Law, 2020
FATF	Financial Action Task Force
FCA	Financial Conduct Authority
FFB	Financial firm business
the Fiduciaries Law	The Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2020
FinTech	Financial Technology

the FSC Law	The Financial Services Commission (Bailiwick of Guernsey) Law, 1987
the Handbook	Handbook on Countering Financial Crime and Terrorist Financing
HNWI	High-net-worth individual
the IBL	The Insurance Business (Bailiwick of Guernsey) Law, 2002
ICO	Initial coin offering
the IMIIL	The Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002
the Law	The Lending, Credit and Finance (Bailiwick of Guernsey) Law, 2022
MCL	Minimum criteria for licensing
MONEYVAL	The Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism
NFT	Non-fungible token
NRFSB	Non-Regulated Financial Services Business
the NRFSB Law	The Registration of Non-Regulated Financial Services Businesses (Bailiwick of Guernsey) Law, 2008
OA	Online Appointment
OPQ	Online Personal Questionnaire
pa	Per annum
Part II	Regulation of credit business under the Law
Part III	Regulation of financial firm businesses and virtual asset service providers under the Law
Part III FFB	Licence to conduct financial firm business activity
Part III VASP	Licence to conduct VASP activity
Part IV	Regulation of financial platforms and intermediation, etc. under the Law
PII	Professional indemnity insurance
the POCL	Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999
the POI Law	The Protection of Investors (Bailiwick of Guernsey) Law, 2020

the Policy Letter	Credit and Finance Legislation Policy Letter (dated 2nd December 2020)
PoS	Proof of Stake
PoW	Proof of work
the Prescribed Businesses Law	The Prescribed Businesses (Bailiwick of Guernsey) Law, 2008
PRISM	Probability Risk and Impact SysteM
regulatory Laws	- the POI Law - the Fiduciaries Law - the BSL - the IBL - the IMIIL - the Enforcement Powers Law - the FSC Law - the Prescribed Businesses Law
RATS	Retirement annuity trust scheme
the Rules	The Lending, Credit and Finance Rules and Guidance, 2022
Saisie	Saisie Procedure (Simplification) (Bailiwick) Order, 1952
TWh	Terawatt-hour
VASP	Virtual asset service provider

18 Appendix 2: Acceptable qualifications for home finance lending and broking

The following qualifications[19] are required for:

- Advising on a regulated agreement for home finance; or
- Arranging (bringing about) an execution-only sale of a regulated agreement for home finance, excluding variations to an existing regulated agreement, except where the effect is to change all or part of the regulated agreement from one interest rate to another.

Chartered Banker Institute (Formerly the Chartered Institute of Bankers in Scotland)
Mortgage Advice and Practice Certificate
Certificate in Mortgage Advice and Practice (MAPC) (Pre 16/09/2004)
MAPC bridge paper plus entry requirements (Pre 31/10/2004)
Chartered Insurance Institute
Certificate in Advanced Mortgage Advice
Certificate in Mortgage Advice
Mortgage Advice Qualification (MAQ) plus entry requirements
Financial & Legal Skills Partnership (formerly the Financial Skills Partnership/Financial Services Skills Council (FSP/FSSC))
FLSP Level 3 Advanced Apprenticeship in Advising on Financial Products (Mortgage Advice Pathway) or Level 3 Advanced Apprenticeship in Providing Mortgage Advice
The London Institute of Banking & Finance (formerly the ifs University College and the ifs School of Finance/Chartered Institute of Bankers)
CeMAP Bridge paper plus entry requirements
Certificate in Mortgage Advice and Practice (Post 01/11/2004)
Diploma for Mortgage Advice and Practice DipMAP (plus entry requirements)
Certificate in Mortgage Advice and Practice (CeMAP) (Pre 31/10/2004)

[19] Data for activity number 20 in relation to advising or arranging *regulated mortgage contracts*, as per the FCA's Appropriate Qualification tables as at 15 June 2022.