

Regulation of credit and consumer business in the Bailiwick

Update prepared by Helen Wyatt (Guernsey)

The Lending, Credit and Finance (Bailiwick of Guernsey) Law, 2022 creates a new statutory framework for the protection of *retail* customers who make use of consumer credit and the provision of home finance.

In this Update, the second in the series, we consider Part II of the Law which regulates credit and consumer business.

Introduction

The Lending, Credit and Finance (Bailiwick of Guernsey) Law, 2022 (the **LCF Law**) has received Privy Council approval and has been registered by the Royal Court of Guernsey.

A commencement ordinance has been lodged to go before the States at its meeting on 23 November. If approved, the LCF Law will come into force in two parts: initially on **1 January 2023** to enable licence applications and on **1 July 2023** when the LCF Law will be fully operational.

We still await the final rules and guidance that will underpin the LCF Law (the **LCF Rules**), which are anticipated to be published by **31 December 2022**.

For an overview of the LCF, refer to our Update [here](#).

Regulation of credit business

The primary purpose of the LCF Law is to regulate the credit and finance sector, in order to protect consumers who make use of services relating to consumer credit. Firms offering or intermediating such services in or from within the Bailiwick, or Bailiwick bodies doing so anywhere in the world, will need to be licensed and regulated by the Guernsey Financial Services Commission (the **Commission**).

Meaning of 'credit'

For the purposes of the LCF Law, the provision of 'credit' will include:

- making available a loan of money (cash or otherwise) and any other kind of financial accommodation
- the sale of goods or services on credit, including hire purchase
- the hiring or leasing out of goods for more than three months
- the issue of credit or charge cards
- any other service or activity as may be specified by regulation.

The LCF Law also regulates 'services ancillary to credit' including assisting by undertaking preparatory work; effecting an introduction; credit brokerage; and acting as an intermediary, in each case with a view to a retail customer accepting the provision of credit. Simply providing a retail customer with the details of potential lenders would not, however, be considered as undertaking preparatory work or effecting an introduction.

Meaning of 'regulated agreement'

The protections will arise in the context of, or with a view to a 'regulated agreement' for the provision of credit. That is an agreement for the provision of credit between a credit provider and a customer (i) who is an *individual* acting for purposes wholly or mainly outside that individual's trade, business or profession or (ii) (not necessarily an individual) where the credit provided is secured against real property in the Bailiwick and used for residential purposes, and in each case under which interest may be charged (or any other charge may be levied).

Part II Licence

Applicants for a licence must meet the minimum criteria for licensing as set out in the LCF Law and comply with the LCF Rules, which set out the standards to be met together with guidance on how to meet those standards.

Whilst the final LCF Rules are yet to be published, certain rules will apply specifically to Part II licensees, for example:

- to allow customers to make full early repayment of the principal of the credit provided under a regulated agreement, with a prescribed method for calculation of any maximum early repayment fee
- to ensure that the customer receives certain information in writing before entering into a regulated agreement, including interest payable, total cost of the credit, repayment schedule, arrangements and fees/charges for early repayment, cooling-off period or period of reflection
- for regulated agreements other than home finance agreements, to allow customers a cooling-off period of no less than two weeks from the date of the regulated agreement during which customers are permitted to cancel
- for home finance agreements, to allow the customer a period of reflection of not less than two weeks from the date the final and unconditional offer is made, during which time the licensee must not withdraw or amend the offer or actively pursue, pressure or contact the customer.

Exclusions and exemptions

The Commission's consultation to the LCF Rules proposed a number of exclusions, ie business which is seen as 'out of scope' of the LCF Law, as well as class and discretionary exemptions. That said, activities which are not in scope of Part II may still be in scope of another Part of the LCF Law.

We will consider exclusions and exemptions in a subsequent Update by which time we expect to have the final detail following publication of the LCF Rules and the Commission's feedback to the consultation.

Next time

In our next Update, we look at the regulation of unfair contract terms and unfair practices in relation to regulated agreements.

If you have any questions or queries, please get in touch with your usual Mourant contact.

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