

# STATES OF JERSEY



Jersey

## DRAFT FINANCIAL SERVICES (JERSEY) AMENDMENT LAW 202-

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Lodged au Greffe on 23rd May 2025  
by the Minister for External Relations  
Earliest date for debate: 8th July 2025

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STATES GREFFE



Jersey

## **DRAFT FINANCIAL SERVICES (JERSEY) AMENDMENT LAW 202-**

### **European Convention on Human Rights**

In accordance with the provisions of Article 16 of the Human Rights (Jersey) Law 2000, the Minister for External Relations has made the following statement –

In the view of the Minister for External Relations, the provisions of the Draft Financial Services (Jersey) Amendment Law 202- are compatible with the Convention Rights.

Signed: **Deputy I.J. Gorst of St. Mary, St. Ouen and St. Peter**  
*Minister for External Relations*

Dated: 21st May 2025

## REPORT

Consumer credit and associated activities will be regulated to strengthen the consumer credit protections provided for in Jersey law. Additionally, the Financial Services (Jersey) Amendment Law 202- will provide clarity for consumer credit businesses, ensuring islanders maintain market access to a wide range of financial products and services. Consumer credit activities will be supervised by the Jersey Financial Services Commission (“**JFSC**”) and Trading Standards.

A two-tier regulatory framework will be adopted for consumer credit business because, while full regulatory supervision by the JFSC may be necessary for some types of consumer credit business, it is not appropriate for all. A lighter touch regulatory regime, supervised by Trading Standards is more suitable for other types of consumer credit business. The legislative and regulatory framework for the consumer credit regime is designed to be flexible and agile, to take account of this two-tier approach and allow for market changes. It must be sufficiently nimble to enable the Government of Jersey (“**Government**”) and JFSC to amend regulations swiftly, ensuring consumer protections while maintaining proportionate approach.

### **Background**

A well-functioning consumer credit market enables consumers to access goods and services and is vital to the community. Whilst a proportion of lending activity in Jersey is carried out by regulated deposit-takers (banks), who are subject to supervisory oversight by the JFSC for deposit-taking, there is a segment of the credit market which is outside regulatory supervision. Most unregulated credit providers in Jersey maintain good standards and adhere to the voluntary Code of Practice for Consumer Lending (“**Voluntary Code**”) ([Consumer lending code of practice \(gov.je\)](#)), which is maintained and updated by Trading Standards. However, without minimum legally binding standards and supervision, some parts of the consumer credit industry may not uphold these standards.

In addition to the Voluntary Code, consumers have existing rights and responsibilities under the [Consumer Protection \(Unfair Practices\) \(Jersey\) Law 2018](#). These are supplemented by the voluntary Code of Conduct for Jersey Debt Collection ([Debt collectors’ code of conduct \(gov.je\)](#)). However, these consumer protections are somewhat limited and do not go far enough to align with Jersey’s position as a leading finance centre.

The Financial Services (Jersey) Amendment Law 202- (“**Draft Law**”) aims to establish a consumer credit regime consistent with other leading financial services jurisdictions, particularly the UK and Guernsey. The aim of the Draft Law is to protect consumers and create a level playing field for businesses involved in consumer credit.

Aligning Jersey’s consumer credit regime with those of the UK and Guernsey is crucial, as in addition to bringing Jersey into line with international good practice for consumer credit business, most products and services offered to Jersey consumers derive from providers based in these jurisdictions and are already subject to consumer credit laws and regulations in their home jurisdictions. Alignment will also avoid unnecessary, potentially confusing, and costly burdens on those businesses to be regulated (costs which may in turn be passed onto consumers). Where there is a divergence in the UK and Guernsey regimes, then subject to specific Jersey legislative or policy objectives, the preference is to follow the Guernsey position, which is less cumbersome, than the UK’s regime. Alignment with the UK and Guernsey will ensure a competitive market for consumers and safeguard operational compatibility across the UK and Channel Islands.

Jersey resident consumers already have sufficient means of redress for data protection and dispute resolution through the [Data Protection \(Jersey\) Law 2018](#) and the [Financial Services Ombudsman](#)

[\(Jersey\) Law 2014](#) for certain consumer lending activities. Therefore, it is not necessary to address these issues in the Draft Law.

### **Consultation**

In July 2023, the Government published a consultation paper on the proposed Draft Law (“**Consultation Paper**”). The Consultation Paper followed extensive engagement with local industry professionals, the Law Officer’s Department and the JFSC.

The consultation ran from 5 July to 15 September 2023 and the Consultation Paper was shared directly with Jersey Consumer Council, Citizens Advice, Trading Standards and CIFO, together with representatives of local businesses, including (but not limited to) financial services industry trade associations, Jersey Finance Limited (“**JFL**”), Jersey Business, the Chamber of Commerce, Digital Jersey, the Institute of Directors and charities such as Age Concern. Consumers were also directly engaged by way of town hall events, one to one drop-in sessions held at Jersey Library and a drop-in session held in a local cafe with Portuguese translators in attendance.

33 responses were received to the Consultation Paper (including a collective response from JFL member firms), 6 of whom were from consumers.

Further engagement included focussed workshops to address the feedback received. These workshops ran throughout the first quarter of 2024.

A response to the Consultation Paper was published by the Government on 23 May 2024 (“**Response Paper**”). This Response Paper incorporated much of the feedback collated from the workshops.

On 14 November 2024, a second consultation paper was published on the Draft Law as amended (“**Consultation Paper 2**”). This shorter consultation ran for a period of 4 weeks and closed on 13 December 2024 and was published on the Government’s website. As with the Consultation Paper, Consultation Paper 2 was sent to multiple trade associations, local businesses (including banks, non-bank lenders and other financial services entities), and organisations. It was also distributed to all retail businesses registered with St. Helier town hall.

Responses were received directly from 15 respondents and an additional response was filed by JFL containing one comment from one member firm. No responses were received from consumers.

A response to Consultation Paper 2 was published on 11 March 2025 (“**Response Paper 2**”)

Following amendments made to the Draft Law as a result of feedback received to Consultation Paper 2 further 3-week closed consultation on the Draft Law took place with key stakeholders.

### **The Draft Law**

The Draft Law amends the [Financial Services \(Jersey\) Law 1998](#) (“**Financial Services Law**”) to include consumer credit business as a new form of financial service business. Persons who conduct consumer credit business must be authorised by the JFSC, unless they are exempt.

“*Consumer credit business*” consists of the following activities if being carried out by way of business:

- Entering into and exercising rights under relevant agreements and arrangements
- Advising on relevant agreements and arrangements
- Credit broking
- Debt-related activities

Debt-related activities includes debt adjusting, debt counselling and debt administration but excludes debt collection. Article 31A of the Draft Law provides a power to draft regulations to cover debt collection.

The regulated activities making up consumer credit business are subject to exemptions contained in Schedule 2 of the Draft Law and to further exemptions that may be prescribed in secondary legislation.

Firms conducting consumer credit business (unless exempt) will be supervised by the JFSC, providing the enhanced regulatory framework for consumer credit business. Exempt consumer credit business will be subject to regulations made under the Draft Law (by way of Article 31A) which will provide more basic consumer protections. These regulations, once approved by the States Assembly, will be overseen by Trading Standards reflecting the two-tier regulatory system.

Firms who are required to register with the JFSC to conduct consumer credit business, must, in addition to complying with the requirements in the Draft Law, comply with the JFSC's code of practice(s) for consumer credit. The key principles that will be contained in the code of practice are:

- Conducting business with integrity
- Conducting business with due skill, care, and diligence
- Paying due regard to the interests of its customers and treat them fairly
- Taking reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems in place
- Maintaining adequate financial resources and arrange adequate protection for clients' assets when it is responsible for them
- Being transparent in its business arrangements and statements including paying due regard to the information needs of its customers and communicate information to them in a way in which is clear, fair, and not misleading, false, or deceptive
- Dealing with the JFSC in an open and co-operative manner and disclose to the JFSC anything relating to the firm that the regulator would reasonably expect notice of
- Managing conflicts of interest fairly, both between itself and its customers and between a customer and another client
- Taking reasonable care to ensure the suitability of its advice and discretionary decisions for any customer, who if entitled, to rely upon its own judgment

### ***New regulation making power***

Article 4 of the Draft Law inserts a new Article 31A into the Financial Services Law that enables regulations to be made to provide wide ranging protections for consumers as well as the power to create regulations in respect of debt collection. These regulations will apply to "*wider consumer credit business*". Wider consumer credit business means activities supervised by the JFSC (by way of enhanced supervision) and Trading Standards (for basic supervision). These regulations are currently being developed and will be brought before the States Assembly for debate in advance of the Draft Law coming into effect.

It is expected that, in addition to regulations on the collection of debt, which will be based on the current code of conduct for debt collection, the regulations on consumer credit business will include for example, restrictions on the use of unfair terms, high interest rates, and requirements for annual percentage rates ("**APR**") payable for credit, the total cost of credit ("**TCC**") and cooling off periods.

Regulations created under the power provided by Article 31A will not impact the power of the Royal Court to enforce interest charged during the period of the loan if it is moderate and reasonable.

The Regulations, once approved by the States Assembly, will come into effect by way of order once the transitional provisions of the Draft Law have passed, and the Draft Law is fully operational.

### ***Scope of the Draft Law***

The Draft Law will apply to all relevant consumer credit agreements, specified credit arrangements and secured lending arrangements to be supervised by the JFSC. Pawnbroking agreements are to be brought into scope later.

The activities that will be brought into scope for supervision by the JFSC as “*consumer credit business*” are as follows:

- Entering into relevant agreements and arrangements
- Exercising rights under relevant agreements and arrangements
- Advising on relevant agreements and arrangements
- Credit broking, inclusive of:
  - Introducing parties in respect of relevant agreements and arrangements
  - Presenting or offering relevant agreements or arrangements
  - Assisting another person to enter into a relevant agreement or arrangement
  - Entering into a relevant agreement or arrangement on behalf of a credit provider
- Debt adjusting, inclusive of:
  - Negotiating with a credit provider(s) on behalf of a borrower
  - Taking over payments to discharge a debt on behalf of a borrower
  - Liquidation of debt on behalf of a borrower
- Debt counselling
- Debt administration, inclusive of:
  - Performance of duties on behalf of a lender/owner (excluding debt collection)
  - Exercising rights on behalf of lender/owner (excluding debt collection)

Further detail on these activities is provided below.

### ***Definitions and interpretation***

Those consumers who will benefit from protections under the regime, are defined as individuals who have entered into a “*consumer credit agreement*” a “*specified credit arrangement*” or “*secured lending arrangement*” in their personal capacity. The definition of “*consumer*” does not apply to individuals acting for business purposes. For example, protections will apply to an individual that takes out a loan to purchase a car for their personal use, but not an individual who is acting in their capacity as a business owner or sole trader wishing to purchase a car for business use. Similarly, a fund manager who receives a loan in the course of their business role or duties would not be considered a consumer. However, if the same fund manager takes out a personal loan entirely unrelated to their role as a fund manager, they would be considered a consumer under this definition.

There is no cap on the limit or the amount of credit that may be supplied to the consumer.

The Draft Law inserts a definition of “*consumer credit business*” into the Financial Services Law definition of “*financial service business*” meaning that anyone who carries on consumer credit business, by way of business, will be regulated by the JFSC.

The definition of “*consumer credit agreement*” pertains exclusively to unsecured credit meaning that no security can be provided in exchange for credit. For example, any terms that attempt to create a security interest or charge over a consumer’s bank account in favour of the bank are not permitted.

Hire purchase and conditional sale agreements, which function similarly to one another, are included in the definition “*specified credit arrangement*”. Although these agreements create a form of security, they are not considered “secured” lending for the purposes of the Draft Law as the security is given over moveable property. Therefore, a separate class of agreements has been created. Pawnbroking, which some may consider to be secured lending, has been temporarily excluded from the definition of specified credit arrangement and will be included later when the [Loi \(1884\) sur le prêt sur gages](#) is repealed, as provided for in the Draft Law.

The term “*secured lending arrangement*” is specifically defined in the Draft Law to refer to both hypothecs and share transfers, which are the Jersey equivalent of what is commonly known as a mortgage. Only loans secured over a Jersey resident’s primary home fall within scope of secured lending under the Draft Law. Any property secured above and beyond a Jersey resident’s primary home is, for the purposes of the consumer credit regime, considered to be for investment or business purposes, and thus outside of the intended scope of the Draft Law.

Collectively, consumer credit agreements, specified credit arrangements and secured lending arrangements are referred to in the Draft Law as “*relevant agreement[s] or arrangement[s]*”.

“*Credit*” is defined by the Draft Law to include a cash loan and any other form of financial accommodation. This definition is intentionally currency and technology agnostic to ensure broad applicability. For example, it encompasses not only traditional currencies, but also digital currencies like cryptocurrency.

#### ***Entering into and exercising rights under relevant agreements and arrangements***

Entering into a relevant agreement or arrangement is a regulated activity under the Draft Law. This means that a lender who provides credit to a consumer by way of business under a consumer credit agreement, specified credit arrangement or secured lending arrangement is subject to the requirements of the Draft Law. The activity also includes persons who exercise those rights on behalf of a lender. However, for clarity, the exclusion of debt collection in this regulated activity at, paragraph 3(b), does not prevent the lender from exercising their right under an agreement or arrangement with a consumer to collect their own debts in the event of default.

However, where debt collection is collected by a third party on behalf of the lender, the conduct of that third party will be subject to regulations specifically dealing with debt collection which are to be issued under the powers provided in Article 31A.

#### ***Advising on relevant agreements and arrangements***

Advice includes any communication that goes beyond just providing information that is likely to influence a consumer’s decision. If a person advises on whether to enter into or change the terms of a relevant agreement or arrangement, the person will be subject to the requirements of the Draft Law and supervised by the JFSC. Advisors must be qualified according to the JFSC’s codes of practice.

#### ***Credit broking and debt-related activities***

“*Credit broking*” refers to the provision of services for which remuneration or some other economic benefit is received. These services help consumers find credit by comparing the market and introducing them to companies that can offer deals, rather than providing the loan directly. Credit broking can occur in various ways, such as through market comparison websites or marketing text messages inviting consumers to take out loans. It also includes situations where goods or services are sold at the consumer’s home (often referred to as a “domestic premises supplier”). Peer-to-peer (“**P2P**”) lending is considered either credit broking and/or lending, depending on the specific activity formed.

Credit broking involves introducing, presenting, offering, assisting in preparatory work, and entering into consumer credit agreements or secured lending arrangements on behalf of a lender, or entering into specified credit arrangements on behalf of an owner. To fall within scope of the Draft Law, these activities must be carried out as a business activity in return for remuneration, which may be pecuniary or take the form of other agreed economic benefits.

A credit broker may also be engaged in other regulated activities; they are not mutually exclusive. For example, a credit broker could also be a lender and thus subject to supervision by the JFSC for lending as well as credit broking. An example of this might be P2P lending.

*“Introducing”* occurs where a credit broker introduces potential borrowers to lenders as part of their business activities. For instance, a dentist who merely passes advertising material to a patient needing to fund dental care would not be “introducing” if no benefit is received from the lender for the introduction. However, in contrast, a car dealer who introduces one or more lenders to a consumer wishing to purchase a car and receives a benefit from the lender(s) for the introduction (regardless of whether the consumer takes out the loan) would be “introducing”.

*“Presenting”* involves activities carried out by a third-party credit broker who directly engages in preparing documentation in support of or related to a consumer credit agreement, specified credit arrangement or secured lending arrangement. This includes, but is not exclusively, presenting the loan application form to the lender and/or transmitting the lender’s agreement to the borrower.

*“Offering”* means making available to the consumer the selling of goods or services on credit, hiring or leasing goods, lending money, issuing credit cards, arranging credit for others. However, for the avoidance of doubt, presenting and/or offering do not include activities such as a surveyor or valuer conducting a valuation on a primary residence for mortgage purposes on behalf of a lender, or a credit reference agency performing background checks on behalf of a third party regulated under the Draft Law.

*“Preparatory work”* includes activities such as collecting information by the third-party credit broker to submit the loan application on behalf of the borrower or collecting the borrower’s signatures on contractual documentation. A credit reference agency conducting a credit check on a borrower on behalf of a lender (or credit broker) would not be performing preparatory work.

Merchants or retailers offering buy-now-pay-later (“**BNPL**”) and short-term interest free agreements as payment options are not currently considered to be credit broking. These and any other potential exemptions to credit broking activities will be considered for approval by the Minister with responsibility for the Financial Services Law as part of the suite of secondary legislation including regulations issued under Article 31A (to be approved by the States Assembly) in due course.

*“Debt adjusting”* involves creating a new legal agreement to help a consumer in financial difficulties repay their debt. This usually includes new plans about how, when and to whom money should be paid. Anyone providing debt adjusting services, by way of business, will be regulated under the Draft Law.

*“Debt counselling”* refers to providing advice to a borrower regarding the liquidation of a debt under a consumer credit agreement, specified credit arrangement or secured lending arrangement. The advice must pertain to a specific debt and debtor and involve giving advice rather than merely providing information. This advice is not limited to overdue debts; it also includes debt that are not overdue. The scope of debt counselling is broad and may include:

- Paying off the debt in full and on time
- Agreeing to a reschedule or temporary halt in debt payments
- The debtor being released from the debt
- Agreeing to a reduced payment amount (including token repayments accepted by the creditor)



- A third party taking over the debtor's obligation to discharge the debt
- Discharging the debt or making it irrecoverable through personal insolvency.

Exemptions to debt counselling (e.g., advice provided by not-for-profit organizations or charities such as Citizen's Advice) will be considered for approval by the Minister with responsibility for the Financial Services Law in due course.

*"Debt administration"* involves taking steps to perform the duties under a consumer credit agreement, specified credit arrangement or secured lending arrangement on behalf of a lender. This includes exercising or enforcing rights under relevant agreements or arrangements on behalf of the lender, provided the activity does not involve debt collecting on behalf of a third party. Debt collecting, for these purposes, means taking steps to procure payment of a debt regulated under the Draft Law. Debt collecting on behalf of a third party will be regulated for separately, via regulations on debt collection to be issued under the provisions at Article 31A and approved by the States Assembly.

### ***Exemptions***

The Draft Law includes several exemptions to balance consumer protections with practical business considerations ensuring that the regulatory framework is effective without being overly burdensome.

In some cases, predominantly where the exemption pertains to the activities of a relevant person, these exemptions may not be considered strictly necessary. This is because if a relevant person is not conducting consumer credit business "by way of business", it is not covered by the Draft Law. However, for clarity for users of the Draft Law and at the request of industry stakeholders who provided feedback during the consultations, these exemptions have been included in the Draft Law.

The inclusion of these exemptions is not meant to imply that any other activity that is not specifically excluded is automatically within scope of the Draft Law. The test to determine if an activity falls under the Draft Law is whether consumer credit business, as defined by the Draft Law, is being conducted by way of business.

The exemptions set out in Part 6 of Schedule 2 of the Draft Law are:

- Media outlets and advertisers can provide generic advice without being regulated. This allows them to promote products and services without facing regulatory burdens.
- Non-financial professionals, such as accountants, can give advice related to their services without being regulated, provided the advice is not separately charged for. This enables them to continue to work without additional compliance requirements.
- Legal professionals who are already regulated by a professional body, such as the Law Society of Jersey, are exempt, allowing them to continue with their work without overlapping regulations.
- Liquidators are exempt to enable them to perform their duties without being regulated for consumer credit business, ensuring efficient management of insolvency processes.
- Persons already regulated in the UK and/or Guernsey for the same activity being performed in Jersey are exempt from registration in Jersey. This simplifies cross-border business activities and maintains a competitive market for consumers. Consumers will have redress through the regulatory regimes of the UK and Guernsey.
- Lending to family members is exempt allowing for personal financial support without overly burdensome regulation.

- Trustees, trust entities and their officers can carry out their fiduciary duties without additional regulation provided by the Draft Law. This protects Jersey's private wealth industry by avoiding conflicts between fiduciary duties and consumer protections.
- Lending to employees, directors, shareholders and other categories of individuals connected to those carrying out consumer credit business is exempt to allow for flexibility of transactions in international financial services work and to ensure personal financial support without any unforeseen consequences or overly burdensome regulation.
- Lenders with limited lending activities ("private lenders") are exempt from JFSC registration, supporting local economic activity without unnecessary regulatory burdens. Lending to family members or connected persons is also exempt, allowing for personal financial support without overburdensome regulation.
- Providers of essential services (water, gas and electricity) and telecommunications services can offer consumer credit agreements without being regulated. This ensures consumers have access to necessary services without added regulatory complexity that would increase the cost of provision of these services for consumers.
- Insurance providers that offer general insurance premiums are exempt from regulation, avoiding duplication and streamlining compliance.

Additional exemptions, particularly in the context of credit broking and debt related activities as referred to above, are anticipated to be forthcoming by way of ministerial order, as part of the suite of secondary legislation.

It is intended under the two-tier regime that irrespective of whether an exemption is granted, a broader prohibition on unfair terms will still apply, along with other basic consumer credit protections – such as limits on APR and TCC – for relevant agreements and arrangements. These protections will apply regardless of any exemption under the Draft Law, except where a specific policy reason exists for the restrictions and requirements not to apply, for example, in the case of trustees whose activities if required to adhere to the regulations to be proposed under Article 31A might conflict with their fiduciary duties.

### ***Transitional provisions***

The Draft Law proposes applicability for consumer credit agreements, specified credit arrangements or secured lending arrangements entered into after the commencement of the Draft Law. It is not proposed that the legislation be retrospective in its application. However, to the extent that a non-relevant agreement or arrangement is re-negotiated, and terms are changed after the commencement of the Draft Law, the re-negotiated agreement or arrangement will be considered a relevant agreement or arrangement for the purposes of the Draft Law.

The Draft Law provides for a 12-month transition period for the supervision of consumer credit business by the JFSC. Businesses who need to apply for relevant registration with the JFSC will have 6 months from enactment of the Draft Law, or by any later date specified by the JFSC, within which to do so. Alternatively, if a consumer credit business is already an existing consumer credit business that is winding down, it has 12 months from the date of enactment of the Draft Law within which it must wind down. If it has not wound down within that 12-month period, then the business must apply for the relevant business registration with the JFSC, unless the JFSC agrees otherwise with the business.

As indicated above, the regulations relating to wider consumer credit business (unfair terms, APR and TCC etc.) and debt collection which are to be issued under the Regulation making power at Article 31A of the Draft Law and will be supervised by Trading Standards, will come into effect, by way of ministerial order once the 12 month transition period expires and at the point the Draft Law "goes live" for supervision by the JFSC.

As consumer credit business is an entirely new category of business for the JFSC to supervise, the JFSC may change the time periods within which it requires relevant registration at any time. The ability to delay the supervision of certain activities mitigates the risk of delaying the supervision of the entire consumer credit regime if, for example, only one part is not ready to supervise while the remainder of the activities are.

### ***Regulations for consequential amendments or provisions***

The States may by way of regulations amend in future any provision brought about by the Draft Law as necessary to ensure the proper application of the consumer credit regime.

### **Related amendments and repeal and final provisions**

#### ***Loi (1880) sur la propriété foncière amended***

The process of dégrèvement involves removing encumbrances (usually hypothecs – often referred to as a mortgage) from immoveable property, typically transferring the property to a creditor who may retain or sell it to recover sums due.

Before dégrèvement can begin, the owner must be relieved of their rights over the property through an involuntary cession, as provided for in the [Loi \(1832\) sur les décrets](#) (“1832 Loi”), the Royal Court Rules and the Court’s Practice Directions. The creditor who brings the involuntary cession then and becomes known as the tenant then proceeds with dégrèvement under the [Loi \(1880\) sur la propriété foncière](#) (“1880 Loi”). The amendments to the 1880 Loi aim to modernise and align this process with the consumer credit regime and equivalent procedures in Guernsey and the UK to ensure that the means for removing encumbrances from immoveable property is fair and transparent.

The Royal Court is given discretion to require any surplus from the sale of the property to be paid to the debtor or into court, helping to protect both the debtor’s and creditor’s interests where there is expected to be a windfall gain for the tenant from a dégrèvement. It will also ensure the best price is achieved in the circumstances avoiding undervalue transactions.

#### ***Loi (1884) sur le prêt sur gages repealed***

The [Loi \(1884\) sur le prêt sur gages](#) (“Pawnbroking Law”) which governs pawnbroking, is outdated and incompatible with the proposed consumer credit regime. The Pawnbroking Law will be repealed and pawnbroking will become a regulated activity supervised by the JFSC. The nature of pawnbroking does not align itself easily with other forms of credit to be regulated by the JFSC. In the absence of current pawnbrokers in Jersey, the JFSC will require time to prepare the necessary codes of practice and pawnbroking will be brought under regulation later by ministerial order.

#### ***Financial Services (Jersey) Law 1998 amended***

The definition of “*specified credit arrangement*” is to be amended by ministerial order to include pawnbroking, aligning it with the consumer credit regime once the Pawnbroking Law is repealed.

#### ***Citation and commencement***

The Draft Law will be brought into force by ministerial order.

### **Financial and staffing implications**

Trading Standards may require additional resources and support to implement the new regulations that provide basic consumer protections. For example, an additional Trading Standards Officer(s) may be required. However, until the secondary legislation is sufficiently advanced and consulted upon, it is not possible for Trading Standards to assess the full impact any financial and resource implications the Draft Law may have.

**Children's Rights Impact Assessment**

A Children's Rights Impact Assessment has been carried out. The impacts on children's rights are likely to be indirect and/or negligible and thus only a screener is required. It will be published on the States Assembly website.

**Human Rights**

The notes on the human rights aspects of the draft Law in the **Appendix** have been prepared by the Law Officers' Department and are included for the information of States Members. They are not, and should not be taken as, legal advice.

**APPENDIX TO REPORT****Human Rights Notes on the Draft Financial Services (Jersey) Amendment Law 202-**

These Notes have been prepared in respect of the draft Financial Services (Jersey) Amendment Law 202- (the “**draft Law**”) by the Law Officers’ Department. They summarise the principal human rights issues arising from the contents of the draft Law and explain why, in the Law Officers’ opinion, the draft Law is compatible with the European Convention on Human Rights (“ECHR”).

**These notes are included for the information of States Members. They are not, and should not be taken as, legal advice.**

The draft Law amends the Financial Services (Jersey) Law 1998 (the “**1998 Law**”). The 1998 Law is compliant with the ECHR.

*Nature of the amendments made by the draft Law*

The draft Law amends the 1998 Law to include “consumer credit business” as a class of financial services business which is a new area of regulation for Jersey. Persons that engage in lending and business ancillary to lending to consumers will be required to seek authorisation from the Jersey Financial Services Commission (“JFSC”) to conduct consumer credit business unless they are exempt.

Consumer credit business is detailed in Schedule 1A of the draft Law and consists of the regulated activities of Entering into and Exercising Rights Under Relevant Agreements and Arrangements (Part 2); Advising on Relevant Agreements and Arrangements (Part 3); and Credit Broking and Debt-Related Activities (Debt adjusting, Debt counselling and Debt administration) (Part 4).

The regulated activities are subject to exemptions contained in Schedule 2 of the draft Law and to further exemptions that may be prescribed in secondary legislation.

The draft Law at Art. 31A provides quite wide Regulation making powers to further enhance consumer credit protections. The Regulations will apply to persons conducting consumer credit business and those persons who are exempt under the 1998 Law. The powers include but are not limited to detailing of unfair terms that must not be included in consumer credit, hire purchase and conditional sale agreements and secured lending arrangements; the requirement to disclose the annual percentage rate (“APR”) and total cost of credit to consumers; and regulation of debt collecting.

The draft Law includes a consequential amendment to the dégrèvement provision in the Loi (1880) sur la propriété foncière to make it more compatible with the consumer credit regime. The amendment provides the Royal Court with discretion to return any surplus to a consumer if one exists at the time of the dégrèvement.

Repeal of the Loi (1884) sur le prêt sur gages that deals with pawnbroking is also provided for in the draft Law. The repeal will be by Order at a later date. In conjunction with the repeal, the draft Law provides the power by Order to amend the definition of “*specified credit arrangement*” to include pawnbroking which will be subject to the supervision of the JFSC.

The draft Law potentially engages two rights under the ECHR. The right to respect for private life in Article 1 Protocol 1 to the ECHR and the right to a fair trial in Article 6 of the ECHR.

The issues in respect of each of these rights and the reasons why the draft Law is compatible with them are set out below.

**Article 1 of Protocol No. 1 to the ECHR (“A1P1”): Peaceful enjoyment of property**

Article A1P1 provides –

*“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.”*

The requirement for persons conducting consumer credit business to make an application to the JFSC to be registered to carry out the regulated activities in the draft Law and the potential imposition of conditions on registration, amount to controls on the use of property and therefore to interferences with the right afforded by A1P1.

The changes made by the draft Law to require persons conducting consumer credit business to be registered do not fundamentally impact on the A1P1 compliance of the 1998 Law, which has already been considered when that Law was passed as all persons that conduct financial services business must be registered and subject to the supervision of the JFSC. The requirement for persons to register is a legitimate aim in the interest of protecting the public when dealing with persons providing financial services and the regime for doing so is proportionate. The draft Law is therefore A1P1 compliant.

**Article 6: Right to a fair trial**

The draft Law may also engage Article 6 of the ECHR, which provides –

- 1 *In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.*
- 2 *Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.*

Article 6(1) ECHR requires that those who face a determination of their ‘civil rights and obligations’ must be entitled to a ‘fair and public hearing...by an independent and impartial tribunal’. The guarantees afforded by Article 6 of the ECHR will only be relevant to the extent that an act or a decision is determinative of a ‘civil right’ or ‘obligation’.

Article 6 is an absolute right and may in theory be engaged by Article 3 of the draft Law that amends Article 2 of the 1998 Law to include consumer credit business as a category of financial services business. Article 7 of the 1998 Law requires persons who are conducting financial services business to apply to the JFSC to be registered. The conduct of unauthorised financial service business is a criminal offence. The 1998 Law provides the JFSC with the decision-making power to approve a registration with or without conditions or refuse an application to register.

From an Article 6(1) ECHR perspective, it remains the case that all decisions made by the JFSC can be appealed to the Royal Court. This right is provided for in Article 11 of the 1998 Law. As the Royal Court is an independent and impartial tribunal for the purposes of Article 6(1) ECHR, the ability to bring an appeal in the Royal Court is sufficient to ensure that these civil rights and obligations are determined in a manner that is compatible with Article 6 of the ECHR.

Accordingly, the provisions of the draft Law are considered to be compatible with A1P1 and Article 6 of the ECHR.

## EXPLANATORY NOTE

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The Financial Services (Jersey) Amendment Law 202- amends the Financial Services (Jersey) Law 1998 (the “1998 Law”) in relation to the regulation of consumer credit business, makes a related amendment to the Loi (1880) sur la propriété foncière and repeals the Loi (1884) sur le prêt sur gages (which regulates pawnbroking).

*Part 1 (Articles 1 to 7)* amends the 1998 Law as follows:

*Article 2* inserts a definition of “consumer credit business” that refers to new Article 2(12) (inserted by *Article 3*). New Article 2(12) provides that a person carries on consumer credit business if by way of business they carry on an activity described in Schedule 1A, Parts 2 to 4 (inserted by *Article 5*). *Article 3* amends Article 2(1) to add consumer credit business to the list of types of financial service business that are regulated by the 1998 Law.

*Article 4* inserts new Articles 31A and 31B. New Article 31A provides that the States may make Regulations relating to consumer protection in connection with wider consumer credit business, which includes an activity that would be consumer credit business if not for an exemption. The Regulations may include –

- requirements to help ensure that consumers entering into agreements have legal capacity and the ability to understand the terms and conditions;
- restrictions or prohibitions on wider consumer credit business involving high-interest, short-term or unsecured lending, or involving agreements attracting certain fees, charges, interest or penalties;
- restrictions or prohibitions on wider consumer credit business, or advertisements relating to it, by reference to the annual percentage rate payable for credit or the total cost of credit;
- requirements for the annual percentage rate payable for credit, or the total cost of credit, to be calculated in accordance with a formula or method, and provision for a person to be authorised to set the formula or method and publish it;
- provisions for the consequences of entering into agreements in contravention of the 1998 Law or the Regulations, including enforceability, avoidance, modification, mitigation, disapplication or replacement;
- provisions for cooling-off periods and rights to cancel, rescind or withdraw from agreements;
- restrictions or prohibitions on unfair terms and conditions of agreements;
- restrictions or prohibitions on advertisements or unsolicited communications relating to wider consumer credit business;
- requirements to disclose certain information in relation to wider consumer credit business;
- provisions for the form and manner of communications relating to wider consumer credit business;
- regulation of restrictions on the rights of consumers or restrictions on the liabilities of persons carrying on wider consumer credit business;
- coverage of secondary, linked and series of agreements;
- provisions giving the Minister power to make an Order that sets or changes terms and conditions of agreements that are treated as unfair.

New Article 31A also allows the making of Regulations relating to consumer protection in connection with consumer credit debt collection.

Any Regulations made under new Article 31A may include –

- provisions giving related powers, rights and obligations; and
- creation of offences for contravening the Regulations and related penalties.

New Article 31B ensures that the new provisions about consumer protection do not affect a power of the Royal Court under customary law.

*Article 5* inserts new Schedule 1A, which describes the activities that are consumer credit business.

Schedule 1A, paragraph 1, contains definitions for the purposes of Schedule 1A and Schedule 2, Part 6. “Consumer” is defined as an individual acting for purposes wholly or mainly outside their trade, business or profession, or who has no trade, business or profession. “Relevant agreement or arrangement” is defined as a consumer credit agreement, secured lending arrangement, conditional sale agreement or hire-purchase agreement. “Consumer credit agreement” is mainly defined as an agreement under which a person provides a consumer with credit of any amount for which no security is given. “Secured lending arrangement” is defined as an arrangement that creates, or may create, security given by a consumer that is for the repayment of a loan or the performance of another obligation and against immovable property (or related shares or securities) that is the consumer’s primary residence in Jersey. “Borrower” is defined as a consumer who receives credit under a relevant agreement or arrangement. And “lender” is defined as the person who provides them with the credit or who exercises, or has the right to exercise, the rights and obligations of that person. “Credit” includes a cash loan and any other form of financial accommodation.

Schedule 1A, paragraphs 2 to 8, describes the various activities that are consumer credit business. In summary, these are –

- entering into a relevant agreement or arrangement as lender;
- obtaining a right or obligation of the lender under a relevant agreement or arrangement;
- exercising or performing a right or obligation of the lender under a relevant agreement or arrangement, but only so far as the activity is not consumer credit debt collection;
- advising a borrower on a relevant agreement or arrangement;
- credit broking;
- debt adjusting;
- debt counselling; and
- debt administration.

*Article 6* inserts new Part 6 into Schedule 2 to specify certain exemptions from consumer credit business. In summary, the following activities are exempt –

- advising or credit broking via periodical publications, broadcasts or services;
- advising in the course of a business or profession other than a financial service business;
- activities of members of the legal profession;
- activities of liquidators;
- activities of a person from their place of business in the United Kingdom or Guernsey that are supervised in that territory;
- activities of a person from their place of business in another territory for business that was not directly solicited or was advised on by someone in Jersey;



- activities of a person with a borrower who is their family member;
- activities of trustees and trust entities and their officers;
- activities in relation to lending by entities to connected persons;
- activities of private lenders;
- activities in relation to consumers who are high net worth individuals and have opted out;
- activities of insurance companies and intermediaries; and
- activities in relation to a hire-purchase agreement for equipment used in the supply of gas, electricity, water or telecommunication services.

*Article 7* inserts new paragraphs 5 to 8 into Schedule 5 to make transitional provision in relation to consumer credit business. Paragraph 5 defines “commencement”. Paragraph 6 ensures that activities count as consumer credit business only if they are carried on after commencement or in relation to agreements or arrangements entered into after commencement. Paragraph 7 protects certain persons from committing an offence of carrying on consumer credit business without being registered. The provision protects –

- an existing operator or a new operator who applies for registration within 6 months after commencement, or a later deadline allowed for them, while the application is determined; and
- an existing operator who stops carrying on the business within 12 months after commencement or a later time allowed for them.

Paragraph 8 enables the making of Regulations to do the following if necessary or expedient as a consequence of amendments made by this amendment Law –

- amend other enactments; or
- create new transitional or supplementary provisions.

*Part 2 (Articles 8 to 11)* includes –

- the amendment of related legislation;
- the later repeal of pawnbroking legislation and amendment of the 1998 Law; and
- final provisions.

*Article 8* amends the Loi (1880) sur la propriété foncière by amending Article 93 to require a statement of valuation of the property *en dégrèvement* to be submitted to the Greffier, indicating the means used to reach the valuation. It also inserts new Article 96A, which empowers the Royal Court to make any orders that it thinks fit if satisfied, having reviewed the statement of valuation and other information, that a surplus (as defined in new Article 96B) would exist if the property were sold. These may include –

- orders to secure sale of the property at a fair market value and requiring the surplus to be paid into the Court or to the insolvent; or
- with the consent of the tenant and insolvent, orders that will result in an amount being paid into the Court or to the insolvent without sale of the property.

The English translation of Articles 96A and 96B is as follows:

**“96A**

- (1) The Royal Court may make any orders that it thinks fit in the circumstances if, having reviewed the information mentioned in paragraph (2), it is satisfied that a surplus would exist if the property comprising the tenancy were sold.
- (2) The information is –

- (a) the statement of valuation submitted under Article 93;
  - (b) any submissions of the tenant or insolvent or any other person required to appear before the Greffier under Article 92; and
  - (c) any other information that the Court considers necessary.
- (3) Orders under paragraph (1) may include –
- (a) orders to secure that the property is sold, that a fair market value is realised and that any surplus is paid into the Court or to the insolvent; and
  - (b) with the consent of the tenant and insolvent, orders that will result in an amount being paid into the Court or to the insolvent without sale of the property.

**96B**

In Article 96A, “surplus” means any amount left over from the sale of the property after payment of –

- (a) the debt owed to the tenant (as a whole, including all interest and costs for which the debtor is liable) immediately before the start of the proceedings;
- (b) the tenant’s expenses generated in the course of realising the security; and
- (c) any other amount payable by the tenant to satisfy the obligations arising from their tenancy under this Law.”

*Article 9*, when later commenced, repeals the *Loi (1884) sur le prêt sur gages*, which regulates pawnbroking.

*Article 10*, when later commenced, replaces definitions in the 1998 Law to treat pawnbroking in a similar way to a conditional sale agreement or hire-purchase agreement.

*Article 11* names the amendment Law. It also provides that –

- most of the amendment Law comes into force on a day specified by Order; and
- *Articles 9 and 10* come into force as specified by Order, either immediately after the rest of the amendment Law or on a later date (to allow a delay before pawnbroking is regulated under the 1998 Law).



Jersey

# DRAFT FINANCIAL SERVICES (JERSEY) AMENDMENT LAW 202-

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Jersey

## DRAFT FINANCIAL SERVICES (JERSEY) AMENDMENT LAW 202-

A **LAW** to amend the [Financial Services \(Jersey\) Law 1998](#) in relation to consumer credit business.

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<i>Adopted by the States</i>	<i>[date to be inserted]</i>
<i>Sanctioned by Order of His Majesty in Council</i>	<i>[date to be inserted]</i>
<i>Registered by the Royal Court</i>	<i>[date to be inserted]</i>
<i>Coming into force</i>	<i>[date to be inserted]</i>

**THE STATES**, subject to the sanction of His Most Excellent Majesty in Council, have adopted the following Law –

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### PART 1

#### [FINANCIAL SERVICES \(JERSEY\) LAW 1998](#) AMENDED

#### **1 [Financial Services \(Jersey\) Law 1998](#) amended**

This Part amends the [Financial Services \(Jersey\) Law 1998](#).

#### **2 Article 1 (general interpretation) amended**

In Article 1(1), after the definition “compliance officer” there is inserted –

“consumer credit business” has, subject to any Order under Article 4, the meaning given in Article 2(12);

#### **3 Article 2 (“financial service business” defined) amended**

(1) In Article 2(1), for “or AIF services business” there is substituted “, AIF services business or consumer credit business”.

(2) After Article 2(11) there is inserted –

(12) A person carries on consumer credit business if by way of business the person carries on an activity described in Schedule 1A, Parts 2 to 4.

#### 4 Articles 31A and 31B inserted

After Article 31 (control of advertising) there is inserted –

##### **31A Regulations about consumer protection**

- (1) The States may make Regulations relating to consumer protection in connection with –
  - (a) wider consumer credit business; or
  - (b) consumer credit debt collection.
- (2) Regulations made under paragraph (1)(a) may include provisions that –
  - (a) require persons carrying on wider consumer credit business to take steps to satisfy themselves that consumers have legal capacity to enter into an agreement and understand the terms and conditions by which they will be bound;
  - (b) restrict or prohibit wider consumer credit business involving high-interest, short-term or unsecured lending, or involving agreements under which there are –
    - (i) high or unreasonable fees or charges, whether they are initial (such as for set-up) or ongoing;
    - (ii) high or unreasonable interest rates or penalties; or
    - (iii) changes in the level of fees, charges, interest or penalties, or some other disadvantage, if the consumer fails to repay within a certain period or in other specified circumstances;
  - (c) restrict or prohibit wider consumer credit business or advertisements relating to it by reference to –
    - (i) the annual percentage rate payable for credit; or
    - (ii) the total cost of credit;
  - (d) require the annual percentage rate payable for credit, or the total cost of credit, to be calculated in accordance with a formula or method –
    - (i) that is set and published (for example, on a website) by a person authorised by the Regulations; and
    - (ii) that may differ for different types of wider consumer credit business;
  - (e) provide for the consequences of entering into an agreement in contravention of this Law or the Regulations, including the enforceability, avoidance, modification, mitigation, disapplication or replacement of –
    - (i) the agreement; or
    - (ii) the terms and conditions of the agreement;
  - (f) provide for cooling-off periods and rights of cancellation or rescission of, or withdrawal from, agreements or offers to enter into agreements, including –
    - (i) the circumstances in which cooling-off periods and the rights apply;

- (ii) the times at or periods within which, and the form and manner in which, the rights may be exercised;
  - (iii) the giving of information as to the rights, and the times at or periods within which, and the form and manner in which, the information must be given;
  - (iv) the restitution of property and the making and recovery of payments if the rights are exercised;
- (g) restrict or prohibit unfair terms and conditions of agreements, including providing for –
  - (i) terms and conditions that are treated as unfair, including because they cause a significant imbalance in the parties' respective rights and obligations to the detriment of the consumer;
  - (ii) the consequences of including unfair terms and conditions;
  - (iii) the enforceability, avoidance, modification, mitigation, disapplication or replacement of unfair terms and conditions;
  - (iv) the terms and conditions that must or must not be included in agreements;
- (h) restrict or prohibit advertisements relating to wider consumer credit business, including as described in Article 31(1) and (2) (as if the advertisement were a financial service advertisement);
- (i) restrict or prohibit unsolicited communications relating to wider consumer credit business;
- (j) require a person to disclose certain information in relation to wider consumer credit business;
- (k) provide for the form and manner of communications relating to wider consumer credit business;
- (l) regulate –
  - (i) restrictions on the rights of consumers or on the liabilities of persons carrying on wider consumer credit business; and
  - (ii) notices (however communicated) that purport to restrict such rights or liabilities;
- (m) cover secondary agreements, linked agreements and series of agreements, and take into account all terms and conditions affecting the rights, obligations and liabilities of the parties;
- (n) give power to the Minister to make an Order that sets or changes terms and conditions that are treated as unfair, for the purposes of sub-paragraph (g)(i).
- (3) Regulations made under paragraph (1)(a) or (b) may –
  - (a) provide for any matter relating to consumer protection;
  - (b) give powers to a public authority (as defined in Article 1(1) of the [Data Protection \(Jersey\) Law 2018](#)), and provide for rights, obligations, liabilities, remedies, penalties, sanctions and other consequences, in respect of other matters provided for in the Regulations;
  - (c) create an offence for a contravention of the Regulations with a penalty no greater than level 3 on the standard scale.
- (4) In this Article –

“agreement” includes any relevant agreement or arrangement, as defined in Schedule 1A, paragraph 1;

“consumer” has the meaning given in Schedule 1A, paragraph 1;

“consumer credit debt collection” has the meaning given in Schedule 1A, paragraph 1;

“wider consumer credit business” means –

- (a) consumer credit business; and
- (b) an activity that would be consumer credit business if not for an exemption under –
  - (i) Article 3 and Schedule 2, Part 6; or
  - (ii) Article 7(2)(a)(ii) or (b) or an Order made under Article 4(1)(a).

### **31B Customary law preserved**

This Law’s provisions about consumer protection do not affect the Court’s power under customary law to enforce the interest charged during the period of a loan only if the interest is moderate and reasonable.

## **5 Schedule 1A inserted**

After Schedule 1 there is inserted –

### **SCHEDULE 1A**

(Article 2(12))

#### **CONSUMER CREDIT BUSINESS**

#### **PART 1**

#### **INTERPRETATION**

### **1 Interpretation**

In this Schedule and in Schedule 2, Part 6 –

“beneficiary”, for a trust, has the meaning given in Article 1(1) of the [Trusts \(Jersey\) Law 1984](#);

“borrower” means a consumer who receives credit under –

- (a) a consumer credit agreement;
- (b) a secured lending arrangement;
- (c) a conditional sale agreement by having goods conditionally sold to them; or
- (d) a hire-purchase agreement by having goods let to them;

“conditional sale agreement” means a conditional sale agreement, as defined in Article 1 of the [Supply of Goods and Services \(Jersey\) Law 2009](#), under which goods are conditionally sold to a consumer;

“connected person”, for an entity that is –

- (a) a company, means its officer, member (including shareholder or guarantor) or employee;
- (b) a limited liability company, means its officer, member or employee;
- (c) a partnership, means its officer or employee; or
- (d) a foundation, means –
  - (i) its officer or employee; or
  - (ii) its beneficiary or founder (as those terms are defined in Article 1(1) of the [Foundations \(Jersey\) Law 2009](#)), or a family member of either;

“consumer” means an individual who is acting for purposes wholly or mainly outside their trade, business or profession or who has no trade, business or profession;

“consumer credit agreement” –

- (a) means an agreement under which a person provides a consumer with credit of any amount for which no security is given; and
- (b) excludes –
  - (i) a specified credit arrangement; and
  - (ii) a pawnbroking arrangement;

“consumer credit debt collection” means taking steps to bring about the payment of a debt due under a relevant agreement or arrangement;

“credit” includes a cash loan and any other form of financial accommodation;

“directly solicit” means that a person brings about consumer credit business –

- (a) only because the person, or another person on their behalf –
  - (i) approaches a third person in Jersey; or
  - (ii) solicits the business from the third person in Jersey; and
- (b) not merely because of an advertisement that complied with Orders made under Article 31 and Regulations made under Article 31A (if any);

“entity” means –

- (a) a company;
- (b) a limited liability company;
- (c) a partnership (including an incorporated limited partnership, a limited liability partnership, a separate limited partnership, a limited partnership or a partnership under customary law); or
- (d) a foundation;

“family member”, of a person, means any of the following –

- (a) their spouse or civil partner;
- (b) another person with whom they live as partner in an enduring family relationship;
- (c) their child, stepchild, parent, sister, brother, grandparent, grandchild, aunt, uncle, nephew, niece or first cousin (meaning a cousin with whom they share grandparents);



“hire-purchase agreement” means a hire-purchase agreement, as defined in Article 1 of the [Supply of Goods and Services \(Jersey\) Law 2009](#), under which goods are let to a consumer;

“lender” means a person who –

- (a) provides credit under –
  - (i) a consumer credit agreement;
  - (ii) a secured lending arrangement;
  - (iii) a conditional sale agreement by conditionally selling goods to another person; or
  - (iv) a hire-purchase agreement by letting goods to another person; or
- (b) exercises, or has the right to exercise, the rights and obligations of the person who provides the credit under the agreement or arrangement;

“officer”, for an entity, has the meaning given in Article 1(1) of the [Trusts \(Jersey\) Law 1984](#);

“pawnbroking arrangement” means an arrangement in which a loan is provided to a consumer in return for the consumer pledging an object as a pawn;

“relevant agreement or arrangement” means –

- (a) a consumer credit agreement;
- (b) a secured lending arrangement; or
- (c) a specified credit arrangement;

“secured lending arrangement” –

- (a) means an arrangement that creates, or may create, security given by a consumer that is –
  - (i) for the repayment of a loan or for the performance of another obligation; and
  - (ii) against immovable property, or against shares or securities giving a right to occupy immovable property, that is the consumer’s primary residence in Jersey; and
- (b) includes any of the following that satisfy clause (a) –
  - (i) a hypothec under the [Loi \(1880\) sur la propriété foncière](#);
  - (ii) a security interest under the [Security Interests \(Jersey\) Law 2012](#);

“settlor”, for a trust, has the meaning given in Article 1(1) of the [Trusts \(Jersey\) Law 1984](#);

“specified credit arrangement” means –

- (a) a conditional sale agreement; or
- (b) a hire-purchase agreement.

**PART 2****ENTERING INTO AND EXERCISING RIGHTS UNDER RELEVANT AGREEMENTS AND ARRANGEMENTS****2 Entering into relevant agreements or arrangements**

A person enters into a relevant agreement or arrangement as lender.

**3 Exercising, performing or obtaining rights or obligations under relevant agreements or arrangements**

- (1) A person obtains a right or obligation of the lender under a relevant agreement or arrangement.
- (2) A person exercises or performs a right or obligation of the lender under a relevant agreement or arrangement, but only so far as the activity is not consumer credit debt collection.

**PART 3****ADVISING ON RELEVANT AGREEMENTS AND ARRANGEMENTS****4 Advising on relevant agreements and arrangements**

A person advises another person on the merits of –

- (a) entering into a particular relevant agreement or arrangement as borrower; or
- (b) varying the terms of their obligations as borrower under a particular relevant agreement or arrangement.

**PART 4****CREDIT BROKING AND DEBT-RELATED ACTIVITIES****5 Credit broking**

- (1) A person –
  - (a) introduces another person who wishes to enter into a relevant agreement or arrangement as borrower to a third person with a view to the third person, by way of business, entering into the agreement or arrangement as lender;
  - (b) introduces another person who wishes to enter into a relevant agreement or arrangement as borrower to a third person who, by way of business, makes an introduction of the kind described in clause (a);
  - (c) presents or offers a relevant agreement or arrangement to another person with a view to the other person entering into it as borrower;

- (d) assists another person by undertaking preparatory work with a view to the other person entering into a relevant agreement or arrangement as borrower; or
  - (e) enters into a relevant agreement or arrangement on behalf of a lender.
- (2) For the purposes of sub-paragraph (1) –
- (a) it does not matter whether the agreement or arrangement is subject to the law of a jurisdiction outside Jersey; and
  - (b) a person does not carry on an activity under the sub-paragraph if they only provide details of potential lenders to another person.

## **6 Debt adjusting**

A person, in relation to debts due under a relevant agreement or arrangement –

- (a) negotiates with the lender, on behalf of the borrower, terms for the discharge of a debt;
- (b) takes over, in return for payments by the borrower, the obligation to discharge a debt; or
- (c) carries on any similar activity concerned with the liquidation of a debt.

## **7 Debt counselling**

A person advises a borrower about the liquidation of a debt due under a relevant agreement or arrangement.

## **8 Debt administration**

A person takes steps –

- (a) to perform obligations under a relevant agreement or arrangement on behalf of the lender; or
- (b) to exercise or to enforce rights under a relevant agreement or arrangement on behalf of the lender, but only so far as the activity is not consumer credit debt collection.

## **6 Schedule 2 (exemptions) amended**

In Schedule 2, at the end there is inserted –

### **PART 6**

### **CONSUMER CREDIT BUSINESS**

## **24 Advising or credit broking in newspapers etc.**

- (1) A specified activity that is carried on by way of a newspaper, journal, magazine, television broadcast, teletext service or sound broadcast, or any other periodical publication, broadcast or electronic information service, if –

- (a) the principal purpose of the publication, broadcast or service, taken as a whole and including any advertisements contained in it, is not the carrying on of the activity; or
- (b) the publisher, broadcaster, provider or producer of the publication, broadcast or service does not derive any direct benefit from any business resulting from the activity.

(2) A specified activity is –

- (a) advising, as described in Schedule 1A, paragraph 4;
- (b) introducing, as described in Schedule 1A, paragraph 5(1)(a) and (b); or
- (c) presenting or offering a relevant agreement or arrangement, as described in Schedule 1A, paragraph 5(1)(c).

## **25 Advising in the course of a business or profession (other than financial service business)**

(1) Advising of the kind described in Schedule 1A, paragraph 4, that –

- (a) is done in the course of carrying on a business or profession that does not otherwise constitute financial service business;
- (b) may reasonably be regarded as a necessary part of other services provided in the course of that business or profession; and
- (c) is not remunerated in addition to the adviser's remuneration for the other services.

(2) In this paragraph, remuneration is not additional merely because it is calculated by reference to time spent.

## **26 Activities of members of the legal profession etc.**

The carrying on of an activity described in Schedule 1A, paragraphs 4 to 8, by –

- (a) a person acting in their capacity as a practising lawyer (as defined in paragraph 20(2)); or
- (b) a person working under the supervision of a person described in clause (a).

## **27 Activities of liquidators**

The carrying on of an activity described in Schedule 1A, paragraphs 4 to 8, by a person –

- (a) acting as a liquidator under the [Bankruptcy \(Désastre\) \(Jersey\) Law 1990](#) or the [Companies \(Jersey\) Law 1991](#) or otherwise;
- (b) acting in a capacity similar to a liquidator, whether in Jersey or elsewhere; or
- (c) acting in reasonable contemplation of their appointment as a liquidator or person acting in a similar capacity.

**28 Activities of certain persons in United Kingdom or Guernsey**

The carrying on of consumer credit business if –

- (a) the business is done –
  - (i) by a person from their place of business in the United Kingdom or the Bailiwick of Guernsey; and
  - (ii) with a borrower in Jersey; and
- (b) the person is supervised for carrying on that type of consumer credit business, and by a relevant supervisory authority, in the United Kingdom or the Bailiwick of Guernsey.

**29 Activities of certain overseas persons**

(1) The carrying on of consumer credit business that –

- (a) is done by an overseas person from their place of business in a territory other than the United Kingdom or the Bailiwick of Guernsey;
- (b) is done with a borrower in Jersey; and
- (c) satisfies sub-paragraph (2).

(2) The consumer credit business satisfies this sub-paragraph if –

- (a) the overseas person does not directly solicit it; or
- (b) the overseas person directly solicits it but another person in Jersey, by way of business, gives to the borrower advice of the kind described in Schedule 1A, paragraph 4, about the particular relevant agreement or arrangement.

(3) In this paragraph, “overseas person” means a person who –

- (a) has no place of business in Jersey from which they carry on consumer credit business in or from Jersey; and
- (b) is not –
  - (i) a company incorporated in Jersey; or
  - (ii) a limited liability company registered in Jersey.

**30 Activities in relation to family members**

The carrying on of consumer credit business by a person with a borrower who is their family member.

**31 Activities of trustees and trust entities and their officers**

(1) The carrying on of consumer credit business by a trustee who –

- (a) is acting in administering the trust and for the purposes of the trust; and
- (b) does not directly solicit, and does not hold themselves out as a provider of, what would be consumer credit business if not for the exemption in this paragraph.

(2) The carrying on of consumer credit business by a trust entity or its officer in relation to –

- (a) a beneficiary or settlor of the trust, or a family member of either; or

- (b) a connected person of the trust entity or of another trust entity of the trust.
- (3) In this paragraph, “trust entity”, for a trust, means an entity that is all or part of its trust property.

### **32 Activities in relation to lending by entities to connected persons**

The carrying on of consumer credit business by an entity or its officer in relation to credit given by the entity to a connected person who did not become a connected person only to obtain the credit.

### **33 Activities of private lenders**

- (1) The entry into a relevant agreement or arrangement as lender, as described in Schedule 1A, paragraph 2, by a private lender.
- (2) In this paragraph –
  - “private lender” means any lender whose relevant credit, at all times –
    - (a) totals £5,000,000 or less; and
    - (b) is given to 10 or fewer consumers;
  - “relevant credit” means credit given under relevant agreements or arrangements but not given to the following –
    - (a) family members of the lender;
    - (b) beneficiaries or settlors of a trust of which the lender is a trustee, or family members of the beneficiaries or settlors; or
    - (c) connected persons of the lender.

### **34 Activities in relation to certain high net worth individuals**

- (1) The carrying on of consumer credit business in relation to a relevant agreement or arrangement for which a high net worth individual –
  - (a) is the borrower; and
  - (b) has opted out.
- (2) A “high net worth individual” means an individual who had, in the calendar year before the year in which they enter into –
  - (a) the relevant consumer credit agreement or specified credit arrangement –
    - (i) net income of £150,000 or more; or
    - (ii) net assets worth £500,000 or more throughout the year; or
  - (b) the relevant secured lending arrangement –
    - (i) net income of £300,000 or more; or
    - (ii) net assets worth £3,000,000 or more throughout the year.
- (3) The “net assets” of a high net worth individual exclude –
  - (a) their primary residence and any loan secured against it; and
  - (b) any benefits (such as a pension or lump sum) payable if their employment ends.

- (4) Otherwise, and for clarity, the individual's net income and net assets are assessed from all of their net income and net assets (not only those in Jersey).
- (5) A high net worth individual has opted out in respect of a relevant agreement or arrangement if –
  - (a) the lender has satisfied the lender's conditions; and
  - (b) the individual has satisfied the individual's condition.
- (6) The lender's first condition is that, before the individual enters into the relevant agreement or arrangement, the lender must confirm that the individual had, in the previous calendar year, the net income or net assets to qualify as a high net worth individual.
- (7) The individual's condition is that, before the individual enters into the relevant agreement or arrangement, the individual must sign a written statement that –
  - (a) describes the agreement or arrangement and declares that they agree that –
    - (i) no person's activities in relation to the agreement or arrangement will count as consumer credit business; and
    - (ii) the individual's only protections or remedies under this Law, in relation to the agreement or arrangement, will be those provided by Regulations relating to consumer protection made under Article 31A; and
  - (b) is in the form approved by an authorised officer of an administration of the States for which the Minister is assigned responsibility.
- (8) The lender's second condition is that the lender must hold a copy of the individual's signed written statement.

### **35 Activities of insurance companies and intermediaries**

The carrying on of consumer credit business in relation to both –

- (a) a contract of insurance of an insurance company that carries on long-term business or general business as defined in the [Insurance Business \(Jersey\) Law 1996](#); and
- (b) an arrangement for credit to pay instalments on any amounts owing under the contract of insurance.

### **36 Activities relating to hire-purchase agreements for equipment used in supply of essential and telecommunication services**

- (1) The carrying on of consumer credit business in relation to a hire-purchase agreement if –
  - (a) the lender is a body corporate that is authorised by or under an enactment to supply –
    - (i) gas, electricity or water; or
    - (ii) telecommunication services; and
  - (b) the subject of the agreement is the following equipment that is used, or is to be used, in connection with the relevant supply –
    - (i) a meter or metering equipment for gas, electricity or water; or

- (ii) any equipment for telecommunication services.
- (2) In this paragraph, “telecommunication service” has the meaning given in Article 1(1) of the [Telecommunications \(Jersey\) Law 2002](#).

## **7 Schedule 5 (transitional provisions) amended**

In Schedule 5, after paragraph 4 there is inserted –

### **5 Interpretation: consumer credit business**

In paragraphs 6 and 7, “commencement” means the time at which those paragraphs come into force.

### **6 No consumer credit business if agreement or arrangement entered into, or activity carried on, before commencement**

- (1) If a person carries on an activity described in Schedule 1A, Parts 2 to 4, and, in order to satisfy the description –
  - (a) the activity must be carried on in relation to an agreement or arrangement that had already been entered into, the person does not carry on consumer credit business if the agreement or arrangement was entered into before commencement; or
  - (b) the activity need not be carried on in relation to an agreement or arrangement that had already been entered into, the person does not carry on consumer credit business if they carry on the activity only before commencement.
- (2) This paragraph overrides Article 2(12).

### **7 Initial protection of persons carrying on consumer credit business**

- (1) An existing operator or a new operator is protected during the period starting on commencement and ending –
  - (a) on the day that their application for registration is finally determined (including on appeal) or is withdrawn, if they apply to be registered for their consumer credit business within 6 months after commencement or by any later deadline specified for them; or
  - (b) 12 months after commencement, or at any later time specified for them, if they are an existing operator that stops carrying on consumer credit business by then.
- (2) The Commission may, on application, give written notice to a person specifying –
  - (a) a later deadline for the purposes of sub-paragraph (1)(a) (deadline for registration) that is 12 months or less after commencement; or
  - (b) a later time for the purposes of sub-paragraph (1)(b) (extension of protected period).
- (3) The Commission may specify a later deadline or time only if it is satisfied that the later deadline or time is justified by exceptional circumstances.



- (4) This Law is modified as follows in respect of a person who applies for registration by the deadline under sub-paragraph (1)(a) –
  - (a) a reference to the period during which a person is registered is taken to be a reference to the period –
    - (i) starting on the date of the application; and
    - (ii) ending on the date on which the application is finally determined (including on appeal) or is withdrawn;
  - (b) a reference to the terms of a registration is taken to be a reference to the terms of the application; and
  - (c) a reference in Article 11 to the Commission, acting under Article 9, revoking a registration is taken to be a reference to the Commission refusing an application under Article 9.
- (5) In this paragraph –
  - “existing operator” means a person who carried on consumer credit business, or an activity that would have been consumer credit business if not for paragraph 6, at any time during the 12 months immediately before commencement;
  - “new operator” means a person who first carried on consumer credit business, or an activity that would have been consumer credit business if not for paragraph 6, at any time during the 12 months starting on commencement;
  - “protected” means that a person’s conduct in carrying on consumer credit business during the relevant period does not constitute commission of an offence under Article 7(4), despite anything in this Law.

## 8 Regulations for consequential amendments or provisions

The States may by Regulations amend any enactment, or provide for any transitional or supplementary matter, as appears to the States to be necessary or expedient as a consequence of an amendment made by the Financial Services (Jersey) Amendment Law 202-.

## PART 2

### RELATED AMENDMENTS, REPEAL AND FINAL PROVISIONS

## 8 [Loi \(1880\) sur la propriété foncière](#) amended

- (1) This Article amends the [Loi \(1880\) sur la propriété foncière](#).
- (2) In Article 93, at the end of the first sentence, there is inserted “et accompagnée d’une déclaration d’évaluation de l’héritage en dégrèvement ou du corps de bien-fonds dont cet héritage fait partie dans laquelle figure la méthode d’évaluation de la valeur déterminée”.
- (3) After Article 96 there is inserted –

**96A**

- (1) Il sera loisible à la Cour Royale de rendre toutes ordonnances qu'elle jugera appropriées dans les circonstances où la Cour aura examiné les informations mentionnées au paragraphe 2 et serait de l'avis qu'un excédent existerait si les biens en dégrèvement étaient vendus.
- (2) Les informations sont –
  - (a) la déclaration d'évaluation remise au Greffier en vertu de l'Article 93;
  - (b) toutes déclarations ou mémoires du tenant après dégrèvement, du cessionnaire ou de toutes autres personnes tenues de comparaître devant le Greffier en vertu de l'Article 92; et
  - (c) toute autre information que la Cour jugera nécessaire.
- (3) Inclus parmi les ordonnances que la Cour Royale pourra rendre en vertu du paragraphe 1, seront –
  - (a) toute ordonnance que les biens en dégrèvement soient vendus, qu'une valeur marchande équitable soit réalisée et que tout excédent soit versé à la Cour ou au cessionnaire; et
  - (b) toute ordonnance avec le consentement préalable du tenant après dégrèvement et du cessionnaire qui aboutirait à ce qu'un montant soit versé à la Cour ou au cessionnaire sans que les biens en dégrèvement soient vendus.

**96B**

À l'Article 96A, le terme "excédent" désigne tout montant restant du produit de la vente des biens en dégrèvement après le paiement –

- (a) de la dette (entière y compris toute somme d'intérêts ou de frais de paiement à la charge du débiteur) que la cessionnaire devait au tenant après dégrèvement en tant que créancier immédiatement avant le début de la procédure de dégrèvement;
- (b) des dépenses engagées par le tenant après dégrèvement pour payer tout contrat et pour réaliser toutes rentes et hypothèques, d'une date antérieure, qui concernent l'héritage en dégrèvement;
- (c) de toute autre somme due par le tenant après dégrèvement pour satisfaire aux obligations auxquelles il eut été assujéti en vertu de s'être porté tenant après dégrèvement en vertu de la présente Loi.

**9 [Loi \(1884\) sur le prêt sur gages](#) repealed**

The [Loi \(1884\) sur le prêt sur gages](#) is repealed.

**10 [Financial Services \(Jersey\) Law 1998](#) amended**

- (1) This Article amends Schedule 1A, paragraph 1, to the [Financial Services \(Jersey\) Law 1998](#).
- (2) In the definition "borrower", after clause (d) there is inserted –
  - (e) a pawnbroking arrangement;
- (3) In the definition "consumer credit agreement", for clause (b) there is substituted –

- (b) excludes a specified credit arrangement;
- (4) In the definition “lender”, after clause (a)(iv) there is inserted –
  - (v) a pawnbroking arrangement; or
- (5) In the definition “specified credit arrangement”, after clause (b) there is inserted –
  - (c) a pawnbroking arrangement.

## **11 Citation and commencement**

- (1) This Law may be cited as the Financial Services (Jersey) Amendment Law 202-.
- (2) All but Articles 9 and 10 come into force on a day specified by the Minister by Order (the “main date”).
- (3) Articles 9 and 10 come into force, as specified by the Minister by Order –
  - (a) immediately after the start of the main date; or
  - (b) on a day after the main date.