



ADVISORY
Industry Information

Guernsey's New Consumer Lending Rules

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Introduction

This briefing is the second in a series of briefings by Walkers' on the Lending, Credit and Finance (Bailiwick of Guernsey) Law, 2022 (the "LCFL"), and provides an overview of the licensing regime applicable to consumer lending businesses under Part II of the LCFL (a "Part II Licence"). Our first briefing can be found [here](#).

The Guernsey Financial Services Commission (the "GFSC") has been consulting on [draft rules and guidance](#) applicable to all licensees under the LCFL (the "Rules"). The consultation has now closed and we await the final form of the Rules, which are due by the end of 2022. Key aspects of the Rules applicable to the holder of a Part II Licence, which are not yet final and are subject to change, will also be covered in this briefing.

Who will need a Part II Licence?

All businesses that provide or offer consumer credit, or services ancillary to the provision of consumer credit, in or from within the Bailiwick of Guernsey ("Guernsey") will need a Part II Licence unless an exemption applies. Further, all Guernsey businesses that provide or offer consumer credit, or services ancillary to the provision of consumer credit, anywhere in the world will need a Part II Licence unless an exemption applies. Carrying out any of these activities without a Part II Licence or an applicable exemption is a criminal offence.

"Consumer credit" includes various loans and other forms of credit provided to individual non-business persons, including personal loans, mortgages, credit cards, and goods and services purchased on credit, hire purchase or with instalment payments.

"Services ancillary to the provision of consumer credit" includes assisting a person in taking out credit, introduction services, and credit brokerage. It also includes debt administration to the extent that it may affect the terms or conditions of the provision of credit, e.g. where it leads to a refinancing or restructuring of credit. This briefing focuses on consumer credit.

In all cases, the person obtaining the credit must be an individual acting other than for purposes of their trade, business or profession.

Specific activities requiring a Part II Licence under the LCFL include:

- personal loans, whether secured or unsecured;
- providing credit cards to individuals in their personal (but not business) capacity; and
- mortgages secured against residential real property in Guernsey, provided that the property is owned by the individual borrowing.

What if the business is already regulated?

The Rules clarify that holders of any other licence under other regulatory laws in Guernsey must also hold a Part II Licence in order to undertake activities regulated under Part II of the LCFL. Therefore a bank, for instance, which provides personal loans, mortgages and/or credit cards, will need a Part II Licence in addition to its banking licence.



Are there any exemptions?

Certain exemptions apply. Most notably there is an equivalence-based exemption in respect of businesses regulated in jurisdictions considered to offer appropriate or equivalent protections as those provided under the LCFL regime (such businesses must notify the GFSC and certain conditions apply).

It is expected that the following will be exempt from the licensing requirement:

- a mortgage secured against commercial property in Guernsey;
- a mortgage secured against any real property located outside Guernsey;
- a mortgage secured against residential property in Guernsey where the property is owned by a trust or company, which is also the borrower;
- a mortgage secured on residential property for the purpose of buy-to-let, development or bridging finance – unless the mortgage is also secured against the borrower's family home; and
- a Lombard loan.

Loans or credit where the lender does not charge any interest and fees are not in scope of the Part II Licence regime. For example, if a shop allows a customer to pay for an item in instalments, but the instalments equal the item's price (i.e. there is no interest or fee for the instalment payments), then there is no consumer credit and the shop does not need a Part II Licence. Late payment interest does not trigger the licensing requirement.

The GFSC also have the discretion to exempt a person from the requirement to hold a Part II Licence, and we await guidance as to the circumstances where the GFSC may do so.

What requirements apply to a holder of a Part II Licence (a "Licensee")?

Cooling-off period (excluding mortgages)

A Licensee must provide non-mortgage customers with a cooling-off period of at least two weeks during which customers may cancel the credit agreement, subject to the return of any credit, goods, or services provided. Licensees must not charge any fees for cancellation prior a loan being drawn down or goods or services being provided and in any event any fees charged during the cooling-off period are restricted to the costs to the Licensee and must be based on a percentage of the value of credit.

Period of reflection (mortgages)

A Licensee must provide mortgage customers with a period of reflection of at least two weeks from the date that a final and unconditional offer of a loan is made by the Licensee. During that period a Licensee must not actively pursue, pressure or contact the customer or withdraw or amend the offer. If the property transaction to which a mortgage agreement relates does not proceed, a customer may return any drawn down funds and cancel the agreement and Licensees must not charge additional fees in such cases.

Early repayment

The Rules impose limitations in relation to early repayment charges. Customers must be allowed to make full early repayment of the principal of the credit provided, and the Rules provide for a maximum early repayment fee and prescribe the calculation method for any early repayment fees.

Annual percentage rate ("APR") and total charge for credit

The Rules also regulate the total charge for credit, capping the total cost of the credit at 100% of the principal amount of the credit. Specific methods of calculating the total charge for credit are prescribed under the Rules. The total charge/total cost of credit must include certain fees and costs, such as intermediary (e.g. brokers and introducers) fees, account maintenance costs and payment-related costs.



Customer information

A Licensee must provide customers with the following information before they take out credit:

- the existence and nature of any commission, fee or other payment paid to or received by them in the process of providing the credit - this requirement extends also to mortgage advisers and brokers, as well as ancillary service providers in relation to home finance arrangements;
- interest payable, including the APR;
- total cost of the credit;
- a prepayment schedule with the value and timing of repayments;
- details of a cooling-off/reflection period; and
- details of early repayment, including any early repayment fees and charges.

During the life of the credit agreement, a Licensee must (at least annually) provide customers with a report reflecting interest charged, payments made and outstanding principal loan remaining.

Once the credit is fully repaid, a Licensee must provide a closing statement.

Unfair contract terms

The Rules prohibit Licensees from including unfair terms in their consumer credit agreements and if such terms are included they will be unenforceable. In general, a term is unfair if, contrary to the requirements of good faith, it causes significant imbalance in the parties' rights and obligations, to the detriment of the borrower. The Rules list out a number of unfair terms (broadly based upon the UK's Consumer Rights Act 2015), but the list is not exhaustive. Examples of unfair terms include terms which:

- exclude or restrict a Licensee's liability arising from a breach of customer rights provided by law;
- relieve a Licensee from providing services with reasonable skill and care;
- restrict customers from taking further loans with other credit providers; or
- enable Licensees to alter the terms of the agreement unilaterally and without a valid reason which is specified in the agreement.

It should be noted that when deciding whether a term is unfair the GFSC will take all circumstances into account, and the Rules recognise that there are certain circumstances where a term, which would otherwise be considered unfair, would be permissible, such as an increase to the applicable interest rate to reflect an increase in the base rate, provided that the borrower is notified immediately.

Suitability: creditworthiness and vulnerability assessments

Licensees must consider the suitability of the credit to be provided to a customer's requirements, needs and position. A Licensee recommending a product or arranging or effecting an agreement must consider certain factors, such as information received from the customer, their creditworthiness and whether they are vulnerable or elderly and the terms of the proposed agreement. Businesses must take a proportional approach to assessing the creditworthiness of a customer with regard to the value of the credit, nature of any security and the customer's circumstances.

Policies and procedures

Licensees must have certain written policies and procedures in place, e.g. a vulnerable customer policy, procedures for assessing affordability, creditworthiness and vulnerability, including factors that warrant increased scrutiny. Businesses must also have policies and procedures in respect of instances of defaults and arrears, including a forbearance policy.



High net worth individuals (“HNWIs”)

Licensees can treat certain customers as HNWIs where the customers are within the criteria for a HNWI as stipulated in the Rules, provided that they have the written consent of the customer. Businesses can dis-apply to HNWIs the sections of the Rules relating to customer suitability and customers experiencing payment difficulties.

Financial resources, capital adequacy, liquidity and insurance

The Rules apply financial resources requirements, however these do not apply to a holder of a licence under either the Banking Supervision (Bailiwick of Guernsey) Law, 2020 or the Insurance Business (Bailiwick of Guernsey) Law, 2002.

Licensees must ensure that they always hold sufficient liquid resources in reserve to allow for an orderly wind-down over a three-month period. Further, the level of these resources must be monitored and checked at least quarterly and the Licensee must immediately notify the GFSC where it is found that the resources are no longer sufficient (the notification must include the steps being taken to rectify the breach).

Mortgage lenders and brokers must maintain professional indemnity insurance and employee dishonesty or fraud insurance in line with the minimum requirements set out in the Rules.

Other requirements

The Rules also include requirements relating to:

- Minimum criteria for licensing - a Licensee must meet the minimum criteria for licensing set out in the LCFL (the requirements are similar to that in other regulatory laws in Guernsey);
- Conduct of business principles – these ten principles relate to integrity, skill, care and diligence, conflicts of interest, information about customers, customer assets, market practice, financial resources, internal organisation, and relations with the GFSC;
- Complaints – including a requirement for a complaints procedure and a complaints log, together with an escalation process and GFSC notification;
- Customer money – customer money is required to be held in a customer money bank account with an approved bank;
- Marketing – Licensees must ensure that promotions and advertising are fair, transparent, and honest and include sufficient information for customers to understand the cost of credit providers, particularly the likely total cost of credit. Other requirements apply to advertising and promotions;
- Appointed Retailers (“ARs”) – an AR is a business that sells a Licensee’s product. The Licensee remains responsible for the AR’s conduct and must take measures to ensure the AR’s compliance with the Rules, including, by ensuring awareness and relevant training is provided regarding the Rules to the AR and relevant employees. The terms of agreement between the Licensee and the AR will therefore be crucial; and
- Treatment of surplus following default - where a Licensee takes possession of assets provided as security following a default, any surplus realised from the sale of those assets must be returned to the borrower. Any assets sold by a Licensee under such circumstances must be sold on an arms-length basis and the Licensee must take reasonable steps to realise a market value for them.

When must a business have its Part II licence in place?

The LCFL and Rules are expected to come into force on 1 January 2023, at which point the window for licence applications will open. There will then be a six-month period during which affected businesses must obtain a Part II Licence, which must be in place by 30 June 2023.

The GFSC have stated that there will be a 50% discount to the relevant application fee where it receives the full licence application before 28 February 2023. If the GFSC receive a licence application after 31 March 2023 there is a risk that the licence will not be granted in time, so affected businesses should look to make their applications early in 2023.



Applications for licences are required to specify the regulated activities to be undertaken by a Licensee and such Licensee must not engage in activities not declared on the licence application, save with the GFSC’s prior written approval.

Walkers Commentary

The Part II Licence and Rules will significantly bolster Guernsey’s relatively limited consumer protection framework, particularly in relation to lending and credit transactions.

Businesses operating in a number of sectors which provide credit to customers in Guernsey, including informal or non-bank/private lenders, telecommunications and utility providers, credit card issuers, mortgage lenders, garages and retailers that provide credit or instalments payments, may well be caught within the scope of the Part II Licence regime. Affected businesses will need to consider factors such as reviewing or preparing relevant business risk assessments, business plans, their terms and conditions of business, policies and procedures relating to fair treatment of and disclosure of certain information to customers etc. to ensure that they do not fall foul of the LCFL.

About Walkers’ Channel Islands regulatory team

Walkers’ Channel Islands regulatory team in Guernsey is fully equipped to advise on all aspects of the new LCFL and Rules, including advising on their application, assisting with licence applications (including business plans and business risk assessments), drafting policies and procedures, drafting customer terms and conditions (including exclusion of unfair terms), drafting agreements with ARs, and staff training.

We have a team of regulatory experts spanning all practice areas who regularly advise on all aspects of Guernsey regulation, including financial services, AML, sanctions, data protection, tax, economic substance, FATCA and the CRS.



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