COLLAS CRILL

Is my business affected? New Consumer Credit and Home Finance regulations in Guernsey

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The Guernsey Financial Services Commission published its final draft of the **Lending, Credit and Finance Rules and Guidance, 2023** (the "**New Rules**") on Thursday 19 January 2023. These support the **Lending, Credit and Finance (Bailiwick of Guernsey) Law, 2022** (the "**Law**").

We explained at the time that there are now four license categories and that more Guernsey firms may be covered by the New Rules than might have been expected – but what does this all mean?

This post concerns businesses involved in any part of the lending, credit, home finance, hire purchase, "Buy Now Pay Later" or broking and introducing industry. If your business is in any way involved, this is important information that you will need to be aware of prior to 1 July 2023.

Credit isn't just about lending

When we think of "credit", most of us will think of credit cards and maybe loans. Some of us will think about mortgages and car finance. After a while, everyone will think about a relationship between a borrower and a lender where money is loaned for interest and/or fees.

Very few of us will think about the people and the topics in between, but these will be covered by the New Rules, too:

- Credit, insurance and home mortgage brokers
- Retailers who offer "store cards" and customer accounts
- Any trader that offers "Buy Now Pay Later" schemes
- Loan agreements between parties who aren't family members
- Car dealers that arrange or introduce customers to lenders or providers of hire and purchase schemes
- Financial advisors
- Debt administrators
- Employers who provide loans to employees for things like cycle-to-work schemes, computer purchases or company car purchases

This might come as a surprise to some, as most of these businesses and agreements were covered under the Registration of Non-Regulated Financial Services Businesses (Bailiwick of Guernsey) Law, 2008, and may already

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have been registered under that law. However, the New Rules and the Lending, Credit and Finance Law, 2022 will effectively replace large parts of the old regime and these businesses will need to be licensed.

Lending to a friend is also covered

The GFSC has been clear that it is not concerned about family members lending money to other family members. However, if someone unrelated to you lends you money, especially if it is for a home purchase, there is a chance that both they and the contract might fall foul of the New Rules.

What the new rules mean for businesses

Businesses affected by the new regime may find that they are already compliant with the majority of the regulatory requirements.

Credit firms will need to apply for a Part II Licence by 1 July 2023 in most circumstances. There are key criteria that applicants must meet to be granted and maintain a licence:

Business criteria

There are key criteria that need to be met by any business under the New Rules, which can be found in Parts 2 through to 6 (inclusive). These relate to:

- Corporate governance and effective management
- Conduct of business
- Prudential and insurance requirements
- Cooperation with the GFSC
- Consumer protection and unfair agreement terms

Most of these criteria will relate to things that most firms will be doing already as good business practice, but we have highlighted the more specific items of conduct and consumer protection below.

Conduct criteria

The GFSC has imposed ten principles of conduct of finance business, which it will expect licensees to adhere to. These include a requirement to act with due skill, care and diligence towards customers and counterparties.

Any person providing advice to customers must be suitably trained for their role. Licensees involved in providing advice on or approving home finance agreements must have an "Approve Qualification" as identified on the GFSC's website, although at the time of writing these were not available to check.

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Consumer protection and unfair agreement terms

Businesses operating under a licence will be dealing in regulated agreements.

If a contract for credit is made in the Bailiwick to a borrower who is acting wholly or mainly outside of that person's trade, business or profession, *or* where a contract for credit is made that is secured against real property in the Bailiwick used for residential purposes, it is now a **regulated agreement**. This means that there are terms which must be included and other terms which are automatically unfair if they are included.

Terms which must be included in regulated agreements relating to credit are:

- Any fees, commissions or other payments made to the person lending, arranging or broking the contract must be disclosed to the potential borrower.
- Total costs of credit must be shown to the borrower. These cannot include any discounts or reward payments and must include all charges that may be incurred or collected into the transaction that the borrower will have to pay.
- All interest payable must be shown, including the Annual Payable Rate (**APR**).
- A repayments schedule, showing the value and timing of repayments to be made.
- Details of the cooling-off period or period of reflection.
- Arrangements, including any charges or fees, for early repayment of the debt.

The GFSC has designated some contract terms as automatically unfair for credit agreements. These include terms that restrict liability for breach of borrowers' rights or for breaches of a duty of care to borrowers. For other terms, the GFSC will assess both their fairness and transparency, and firms offering credit or finance should consider reviewing their extant contract terms to assess the likelihood that these might be carved out by the GFSC if they are ever challenged.

What if we already hold a different license?

In most cases, firms will need to hold a Part II license **in addition to** any banking or other financial services license, or indeed any other regulated status.

If you think your business might require a Part II license, or simply wants advice on the licenses it should hold, if any, please get in touch with our Corporate Advisory Team.

Exceptions to the rule

There are some exclusions under the new regime, such as *de minimis* trading under £50,000 per year for small firms, or where firms offer a "Buy Now Pay Later" or 0% finance scheme that will *never* have fees applied, even if a customer defaults on the payments. If you are involved in the sector, the chances are that your business cannot benefit from these.

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More useful to businesses might be the *appointed retailer* scheme and the overseas equivalence scheme.

Appointed Retailer and Appointed Motor Trader

Retailers and motor traders that use a credit or finance company to supply credit may be classed as *Appointed Retailers* or *Appointed Motor Traders*.

This mirrors the *Appointed Representative* scheme in England and Wales.

Effectively, the retailer or motor trader must be acting under a written contract with a licensed firm, effectively as that firm's agent. The licensed firm will own the regulatory responsibility, and it will need to make sure that the Appointed Retailer or Motor Trader has trained staff, complies with the regulations and recognises vulnerable customers.

The GFSC will generally deal with the licensed firm, but may choose to visit Appointed Retailers or Motor Traders as part of their regulatory dealings with the licensee.

If your firm believes that it is acting as an Appointed Retailer and wishes someone to review its arrangements, please get in touch.

Equivalence

Firms that are already regulated in another jurisdiction – such as England and Wales, or Jersey – may be able to notify the GFSC that they wish to conduct business under the same terms in Guernsey.

They will be exempt from holding a Part II License, but only for activities that they are already regulated for and only if those activities have been notified to the GFSC first.

The full list of equivalent jurisdictions can be found in The Lending, Credit and Finance (Designated Jurisdiction and Fees) Regulations, 2023.

Other exclusions and exceptions

There may be other situations where your business – or your informal lending – might not be caught by the New Rules or the Law. These are very case specific and the technicalities of the situation might mean the difference between needing a licence and not needing one.

If you are in doubt, please get in touch with our Guernsey Corporate, Finance & Funds team.

The GFSC can object to changes in your business - such as control

There is a change of supervised role regime for licenced firms under section 45 of the Law. If you are selling a licensed credit or home finance business, broker or other intermediary, you need to inform the GFSC with at

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least 14 days' notice.

These supervised roles are:

- Controllers (such as majority or significant shareholders, or where lots of shareholders are the same ultimate beneficial owner, that person)
- Partners in the case of partnerships
- Money laundering reporting officers
- Compliance officers

The GFSC will want to know who the proposed replacements will be, and they have the power to object to the proposed replacements.

What happens if we ignore the New Rules?

Fines may be issued, and in some cases a fine and up to two years imprisonment, for persons who contravene the Law and by extension the New Rules. These punishments may be handed down to directors and officers of organisations as well as to companies and partnerships themselves.

If you think that your firm might be impacted by the New Rules, we are happy to help. Please get in touch with our Guernsey Corporate Advisory team to discuss potential impacts to your business.

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