



Guernsey Financial  
Services Commission

# Credit and Finance





Guernsey Financial  
Services Commission

# Banking and Insurance Division

Credit & Finance

10 & 11 November 2021

Jon Tooley & Kathryn Bowley

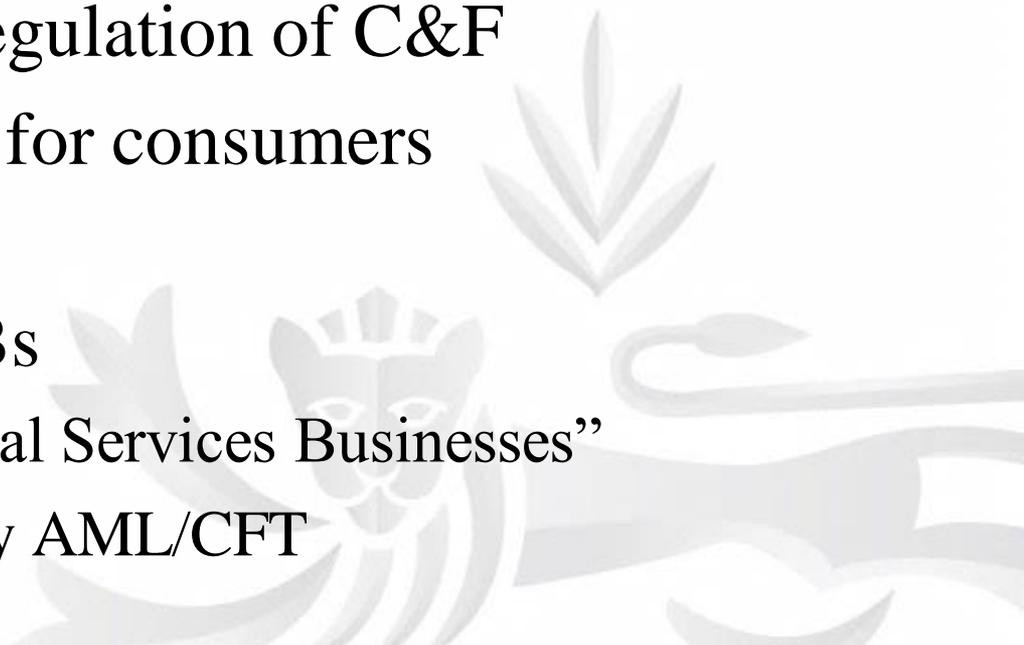
# Purpose

Aim of the presentation is to:

- set out the background to the Credit and Finance Law;
- outline initial views and proposals; and
- identify how the new law is likely to affect firms;

in order to help firms prepare, understand the process and potential timescales, to be in a position to provide an informed response to information requests and consultation.

# Credit & Finance Law

- New
  - Bailiwick legislation (Sark & Alderney too)
  - Currently we have no regulation of C&F
  - Only limited protection for consumers
    - Usury Law
  - Registration for NREFSBs
    - “Non-Regulated Financial Services Businesses”
    - ~ 40 NREFSBs, primarily AML/CFT
- 

# History

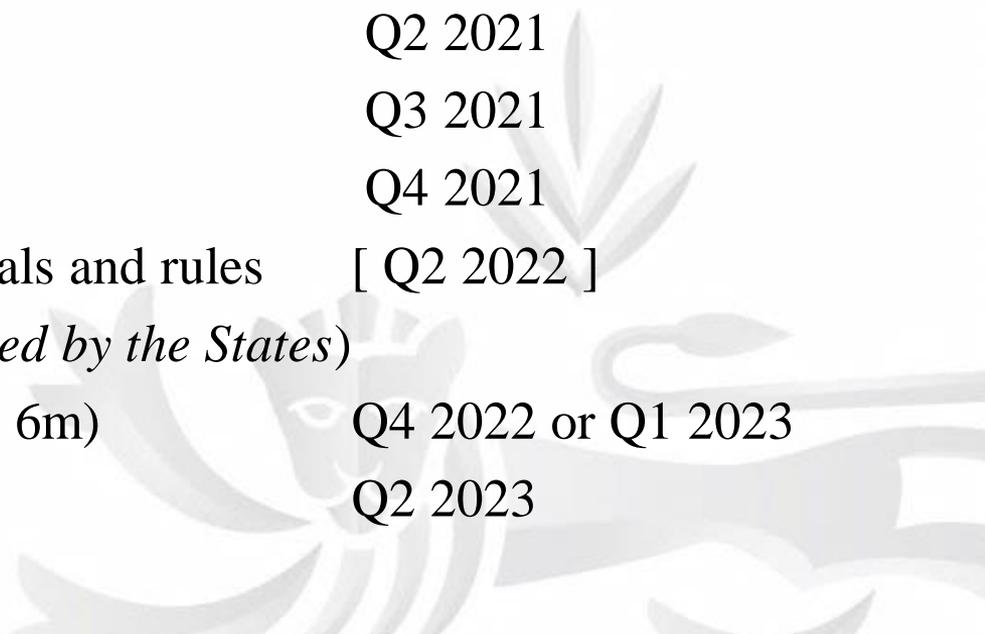
- Longstanding States of Guernsey policy proposal
- Initial Commission Discussion Paper in 2016
- Consultation Paper, 2017 set out a proposed approach
  - Feedback and responses are foundation for current approach
- States of Guernsey Policy Letter (approved Feb 2021)
  - [www.gov.gg/article/180025/Credit-and-Finance-Legislation](http://www.gov.gg/article/180025/Credit-and-Finance-Legislation)
- Sets framework, mandate for licensing
- Detail for Commission to fill in\*

\*[Post-presentation note – this point was clarified during the presentation. The Commission will consult on the rules and guidance as a fundamental part of the implementation process]

# When will it come in?

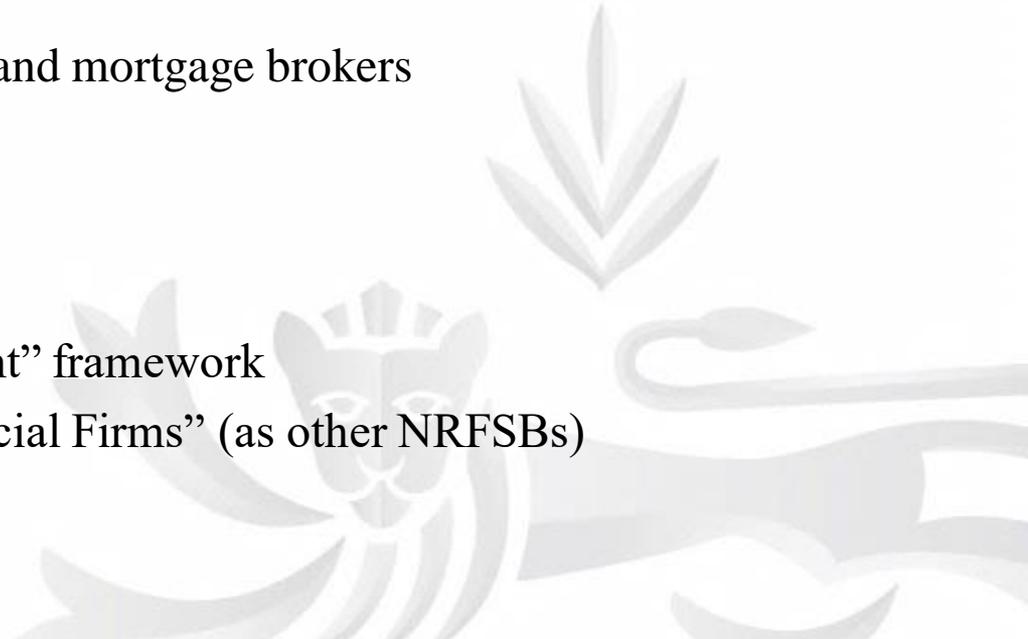
- Law is being drafted by the Law Officers
  - Timing is for the States, assume will be approved in 2022

Draft timeline for Commission – dates are provisional

- Initial engagement Q2 2021
  - Informal meetings with industry Q3 2021
  - Survey and information gathering Q4 2021
  - Consultation Paper: Policy proposals and rules [ Q2 2022 ]  
*(subject to law being approved by the States)*
  - Licence applications open (ideally 6m) Q4 2022 or Q1 2023
  - New regime goes live Q2 2023
- 

# Who does it cover?

- Lenders and consumer credit providers
- Home finance and mortgage providers
- Ancillary service providers
  - Intermediaries, including credit and mortgage brokers
  - Retailers and introducers
  - Debt consolidators
- Commercial, B2B lending
  - Outside the “regulated agreement” framework
  - licensed treated as “Other Financial Firms” (as other NRFSBs)



# Other services

## Digital and innovative services

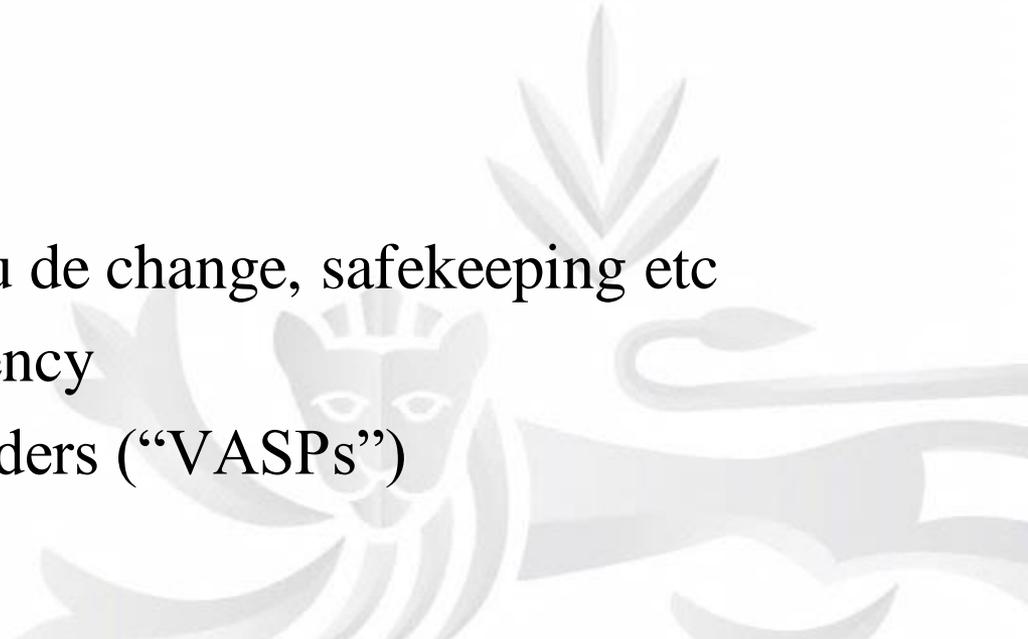
- P2P lending and finance
- Crowdfunding

## Other Financial Firms

- Former NRFSBs
- Commercial lenders, bureau de change, safekeeping etc

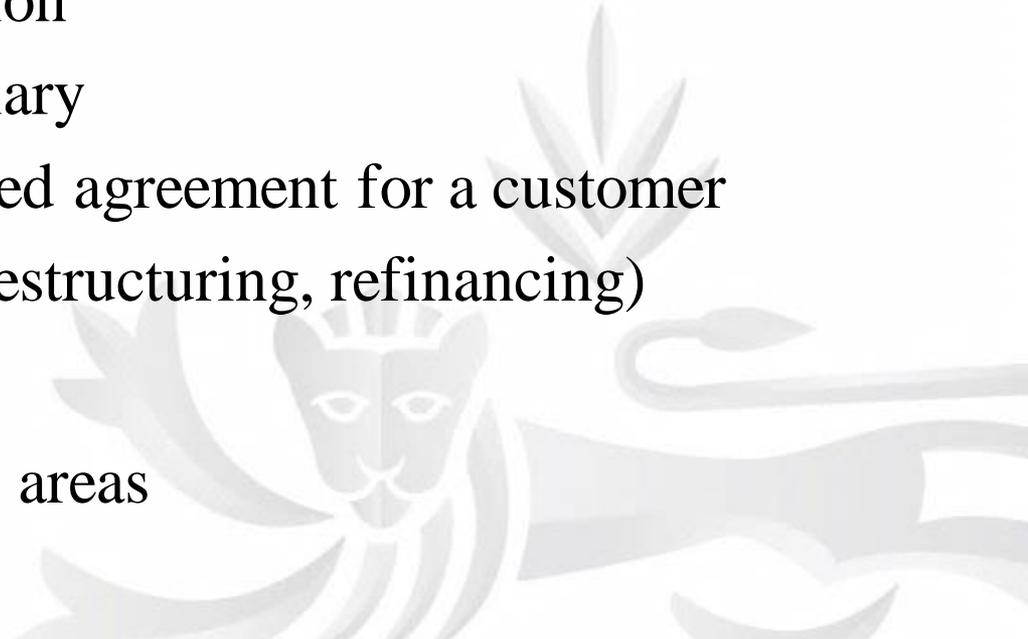
## Virtual assets and crypto currency

- Virtual Asset Service Providers (“VASPs”)



# Ancillary Services

- Policy Letter identifies five categories:
  - i. Assisting a retail customer
  - ii. Effecting an introduction
  - iii. Acting as an intermediary
  - iv. Entering into a regulated agreement for a customer
  - v. Debt administration (restructuring, refinancing)
- All require a licence
  - Propose to exempt some areas



# What is it for?

I

- License/regulate credit market
  - Introduces “regulated agreements”
- To protect consumers
  - Fair treatment of borrowers
  - Focus on consumer credit & home finance
  - Unfair contract terms
  - Cooling off periods
- Replaces NRFSB registration regime



# What is it for?

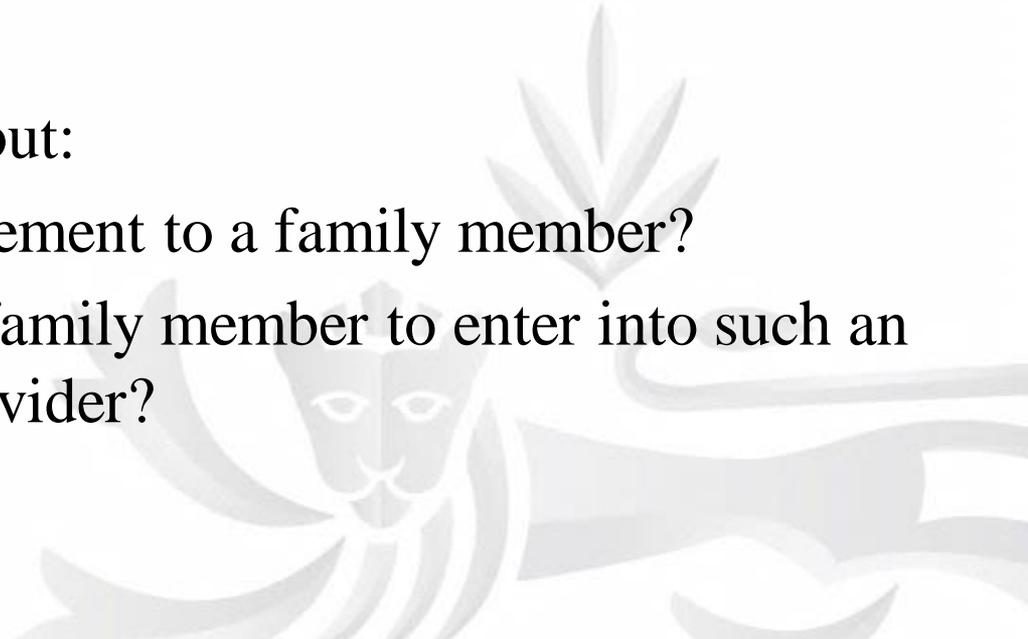
# II

**To ensure Bailiwick customers are treated fairly by lenders, credit and home finance providers.**

# What is fair?

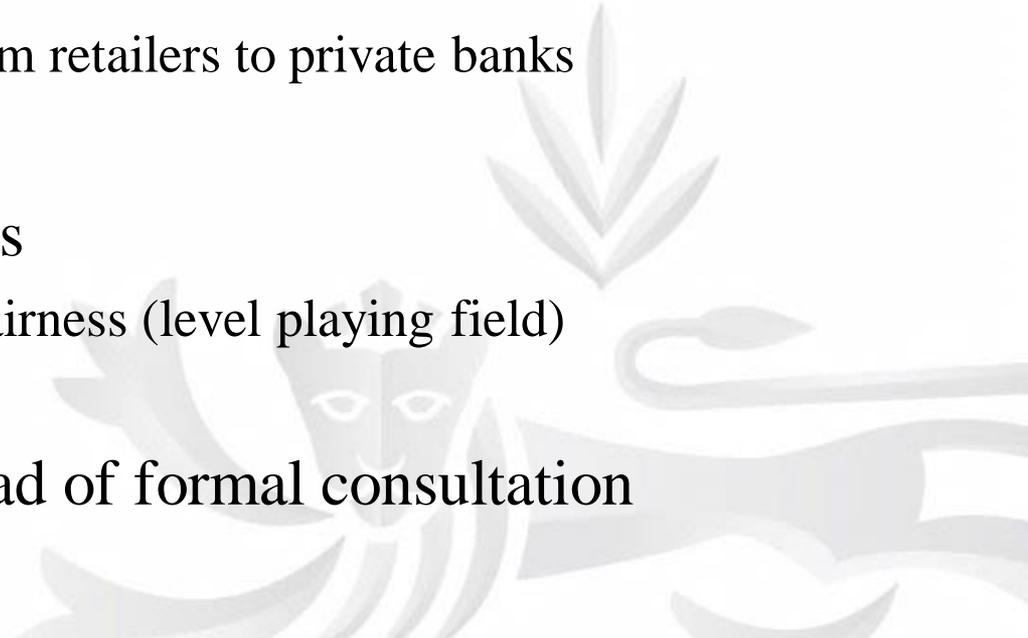
It depends on circumstances, but:

- Would you offer the arrangement to a family member?
- Would you be happy for a family member to enter into such an agreement with another provider?



# What have we done so far?

- Industry soundings
- Informal meetings
  - With more than 50 local businesses and advisers
  - Cross section of industry, from retailers to private banks
- Contributed to law drafting
- Developing policy proposals
  - Some issues: practicalities, fairness (level playing field)
  - Consultation
- Continued engagement ahead of formal consultation



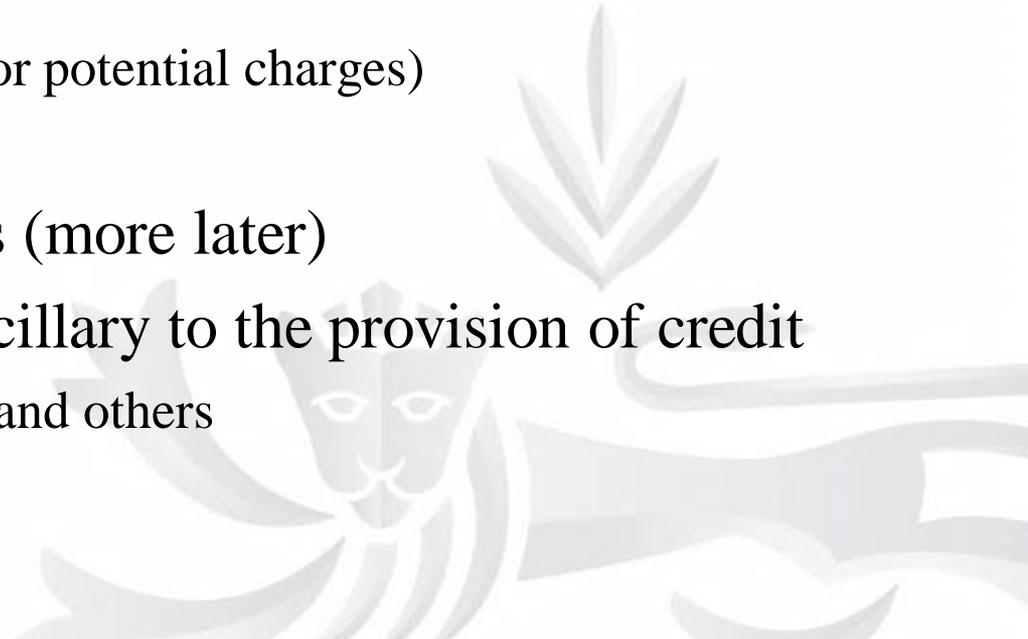
# What have we heard?

Some clear messages from engagement to date:

- Generally positive response
  - We should have rules to protect consumers
  - Don't invent a new approach for the Bailiwick
    - High cost & makes the Bailiwick less attractive to business
    - OK to adopt common principles, e.g., to use standard APR calcs
    - So firms can use existing or off the shelf software/systems
    - Simplify / reduce the volume of rules compared to UK, FCA
  - Level playing field
- 

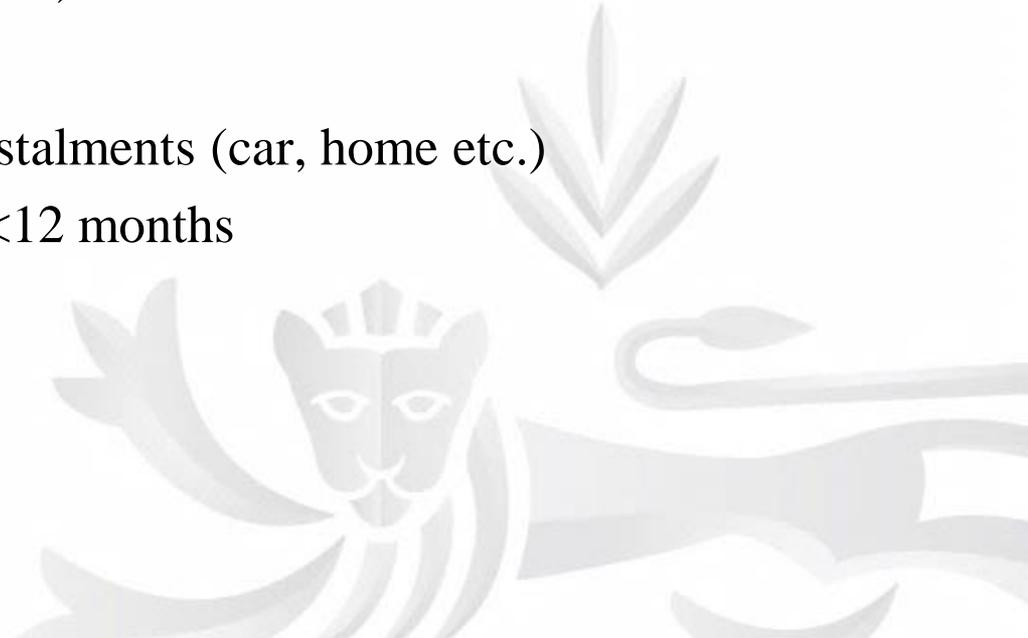
# Consumer Credit

- Who is affected?
  - Credit providers entering into a regulated agreement
    - With a consumer
    - Any interest or charges (or potential charges)
    - By way of business
  - Home Finance providers (more later)
  - Providers of services ancillary to the provision of credit
    - Intermediaries – brokers and others



# Exemptions

- Introducers simply providing information
- Retailers who act as the “Appointed Representative” of a licensed lender (see next slide)
- Instalment arrangements
  - e.g., utility bills, insurance instalments (car, home etc.)
  - no interest or other charges, <12 months
  - not late payment fees



# Rationale

What are we trying to achieve?

Lenders and credit providers must take reasonable steps to ensure that customers can afford repayments on the arrangements they enter into.

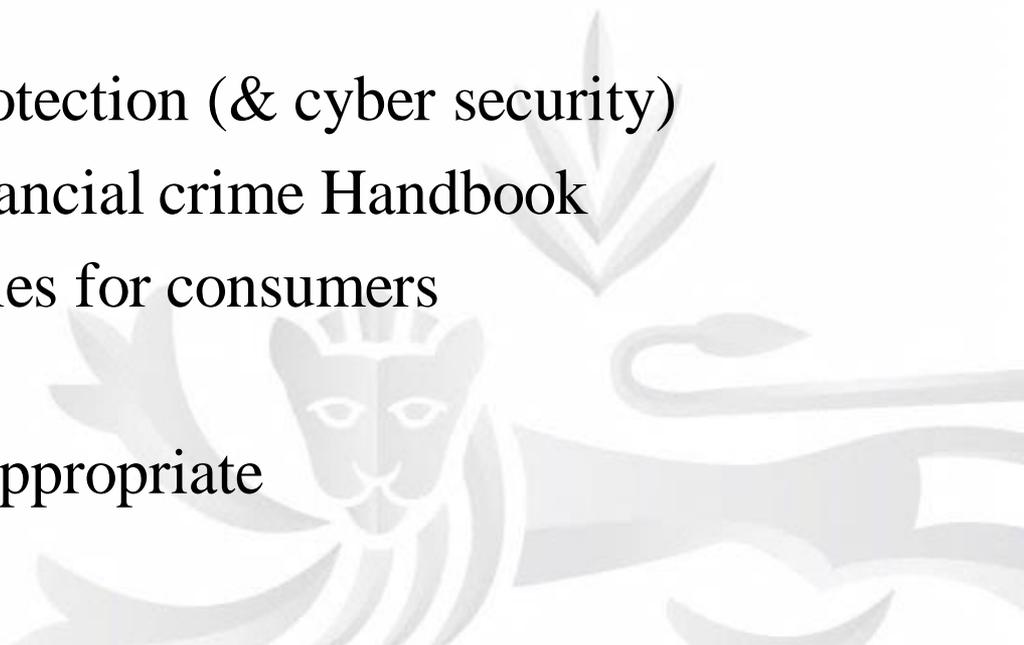
- Not seeking to exclude anyone
- Just because a customer is classed as vulnerable does not mean they should be denied access to credit

Must ensure customers:

- understand what they are signing up to
- are aware of the cost, terms and conditions up front
- can afford the arrangements on offer

# Lenders & Credit Providers

What will we expect?

- Meet the minimum criteria for licensing
  - Appropriate resources
    - capital, systems, data protection (& cyber security)
  - AML/CFT obligations - financial crime Handbook
  - Appropriate rules and policies for consumers
  - Reporting & disclosure
  - Accounts – audited where appropriate
- 

# Lenders & Credit Providers

What are the appropriate rules and policies?

- Creditworthiness – including **affordability**
- Appropriate to circumstances
- Vulnerability
- Disclosure of information prior to agreement
  - Monthly payments, interest rate, total cost
- Fair promotions and advertising
- Calculations of interest rates – standard approach (APR)
- Cooling off periods



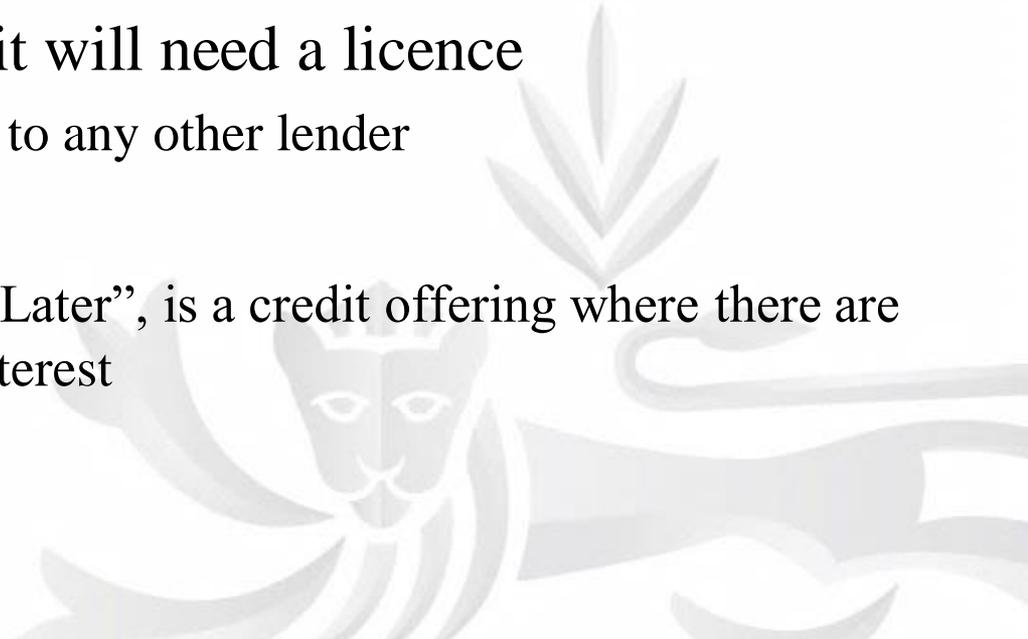
# Intermediaries and Brokers

What we expect depends on the activity

- Tailored: fewer obligations for broker than lenders
  - No minimum capital
  - Not subject to financial crime handbook (AML/CFT)
  - No additional insurance requirements (except mortgage advice)
  - No requirement for audited accounts
- Some exemptions from rules/licensing
  - Introducers simply passing on contact information
  - Retailers who are appointed representatives
- May receive a fee for such activities
- Costs passed on to customers must be included in overall cost of credit

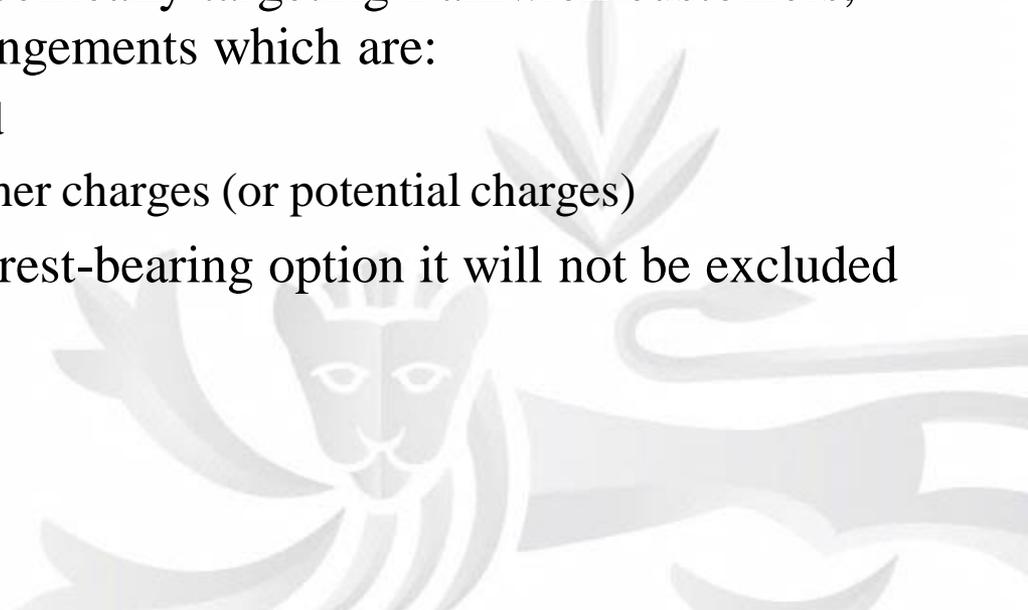
# Retailers

- Appointed Representatives of a licensed lender:
  - Retailer is exempt
  - Lender is responsible for training, conduct of retailer
- Retailers offering own credit will need a licence
  - Lending/credit rules apply as to any other lender
- Instalment arrangements
  - BNPL – “Buy Now, Pay Later”, is a credit offering where there are (or may be) charges or interest



# BNPL - Buy Now Pay Later

- A relatively new and growing area of finance
- Causing some concern (e.g., UK)
  - levels of debt being run up by consumers
- In scope if Bailiwick based or specifically targeting Bailiwick customers, propose to exclude (exempt) arrangements which are:
  - <12 months in duration; and
  - do not include interest or other charges (or potential charges)
- If arrangement defaults to an interest-bearing option it will not be excluded
- Will review as necessary



# Intermediaries

- Motor traders
  - Special case, intermediaries/credit brokers
  - Often high value, complex credit products
- Has been an area of focus (UK & elsewhere)
  - In particular, commission models, disclosure & conduct
  - Consumers should not be pressured into arrangements they cannot afford or do not understand
  - Incentives should not be structured in a way which might (inadvertently) encourage this

# Home Finance



# Home Finance

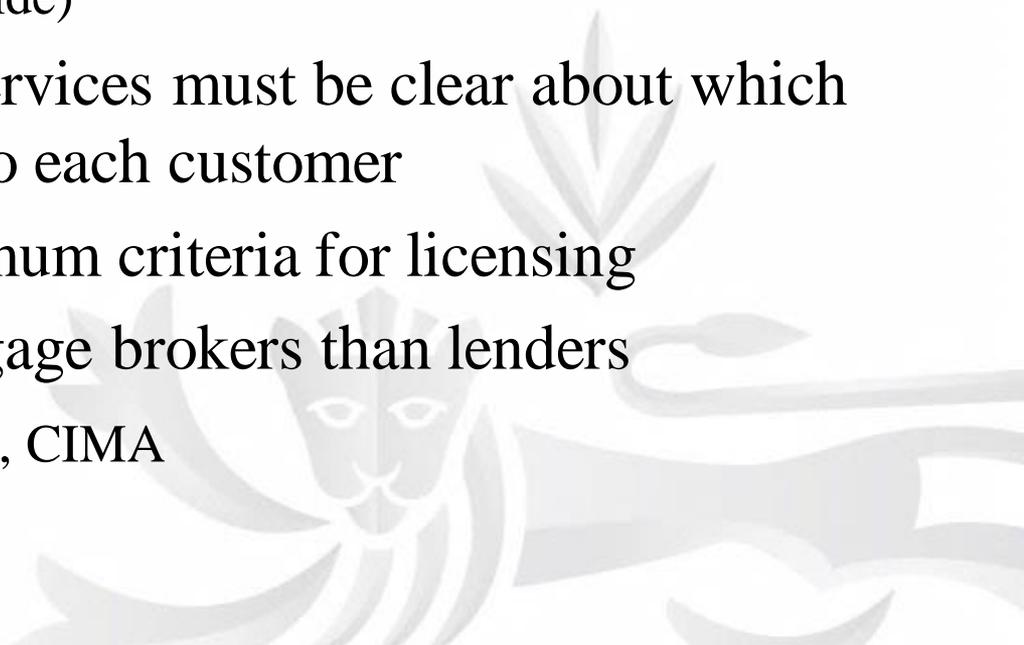
# I

- Regulated agreements
- Loans secured against residential property
- Focus on owner occupiers
  - Consumer protection for householders
  - Highlighted as a key issue in the Policy Letter
- Alderney and Sark
  - C&F legislation is Bailiwick wide, so included in the legislation
  - There may be specific rules and/or exemptions for Sark and Alderney, to the extent that specific arrangements are needed in respect of, e.g., property/security against lending

# Home Finance

## II

### Lenders and brokers

- Need to be licensed to operate in Bailiwick market
    - unless equivalent (see next slide)
  - Licensees providing both services must be clear about which service they are providing to each customer
  - Will need to meet the minimum criteria for licensing
  - Fewer obligations for mortgage brokers than lenders
  - Minimum qualifications e.g., CIMA
- 

# Home Finance

## III

- Level playing field
- To protect local consumers, lenders targeting the Bailiwick from elsewhere (e.g., Jersey, IoM) will need a licence
- Only the UK is likely to be equivalent (regulated lenders)
  - will need to notify/apply for licence exemption
  - don't propose to restrict individuals accessing other lenders that are outside our jurisdiction (provided they do not target the Bailiwick)
  - but “borrower beware”: such arrangements are likely to be unregulated, with no consumer protection
  - in practice, lenders unlikely to lend here unless they know the market

# Home Finance – Rules (I)

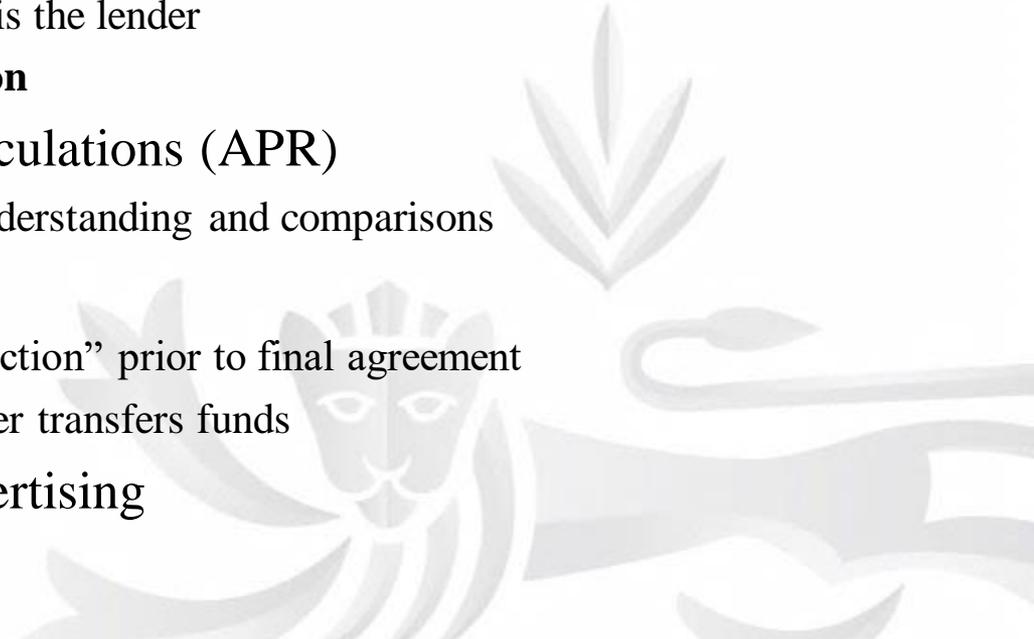
Firms will need to have appropriate policies and procedures in place, when they apply for a licence, to address:

- Credit worthiness – including **affordability**
  - Appropriate to circumstances
  - Stress testing expected
- Vulnerability
  - Covers a range of issues – from language barriers to accessibility
  - Customers should not be denied credit just because they are vulnerable
  - But may need to take additional steps to ensure customers understand the implications and risks of any arrangements they agree too and the risks
- Policies and procedures for dealing with debt and arrears
- In the event of default/repossession, surplus returned to customer

# Home Finance – Rules (II)

What are appropriate rules and policies for home finance?

- Disclosure of information prior to agreement
  - Monthly payments, interest rates, tie in periods, total costs
  - Must be clear about who is the lender
  - **Must disclose commission**
- Standard interest rate calculations (APR)
  - Essential for customer understanding and comparisons
- Cooling off period
  - Propose a “period of reflection” prior to final agreement
  - 2 weeks, or when customer transfers funds
- Fair promotions and advertising



# Home Finance

## IV

- Focus is on owner occupiers
- Exclude Buy to Let (“BTL”) arrangements
  - unless part of BTL borrowing is secured against family home
  - similarly for development loans
- Exclusions for High Net Worth Individuals (“HNWI”)
  - Must meet certain thresholds
    - income/net asset related
    - subject to consultation, but, e.g., net assets >£3m, income >£150k pa
  - Subject to customer consent, need not apply detailed rules
  - Lenders may limit themselves to the HNWI market if they wish

# Home Finance

V

- Other arrangements
  - Home owned through a company or trust - more complex
  - Propose to exclude, open to consultation
- Equity release
  - No specific provisions at this time
  - Important rules protect customers as/when arrangements come in
- Peer to Peer arrangements
  - For home finance, the relevant rules will apply
  - At least one provider must be responsible for consumer protection
  - May be lead lender or the platform provider/broker

# Motor Finance



# Motor Finance

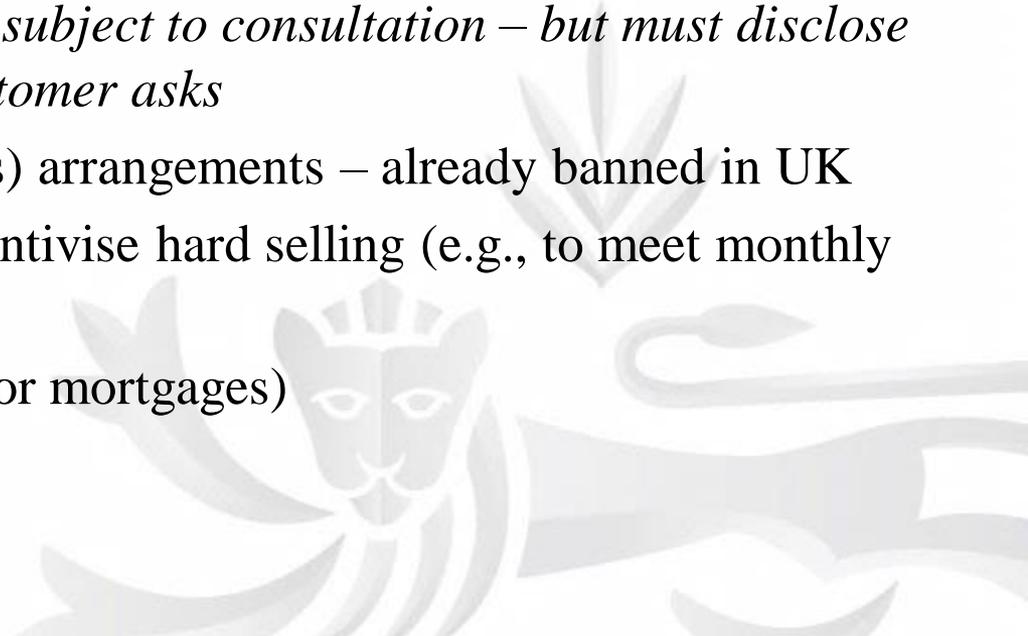
- Arrangements must include affordability checks\*
  - essential part of creditworthiness reviews, including stress tests
  - appropriate to customer circumstances, loan value
  - responsibility for brokers as well as lenders
- Disclosure
  - pricing, monthly payments, interest rates and total cost of credit
  - standard interest rate calculation for all lenders, APR (as UK FCA)
- Cooling off period
  - applies to finance arrangements (not necessarily the goods involved)

\*[Post-presentation note – this point was clarified during the presentation. Affordability checks proportionate to circumstances need to be carried out by the broker or lender as appropriate]

# Motor Trade

- Commission

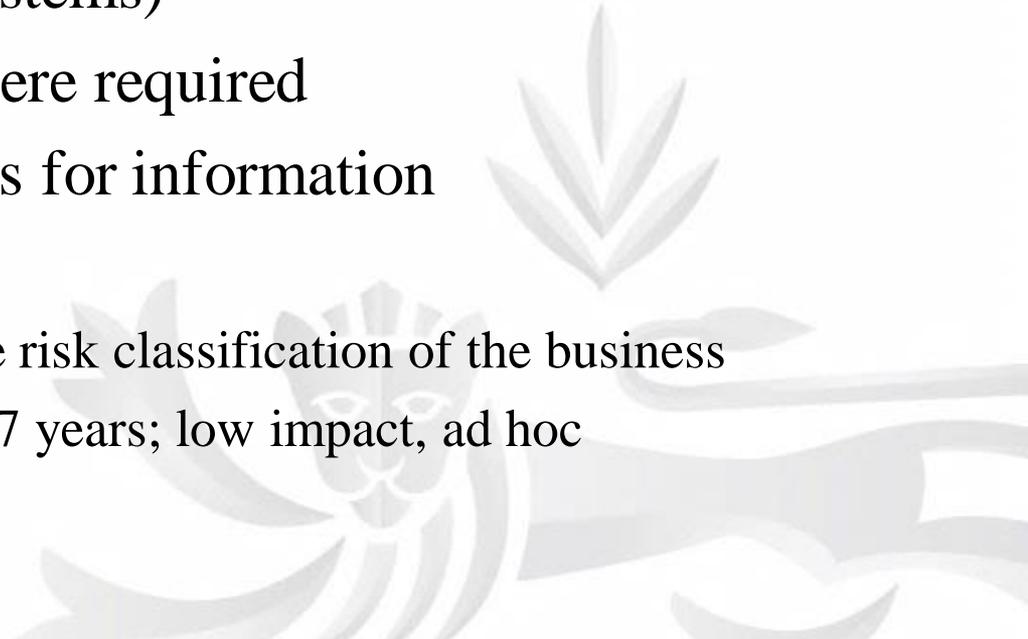
- Must disclose the existence and nature of commission prior to agreement
- *not necessarily the amount – subject to consultation – but must disclose commission figures if the customer asks*
- No more DIC (diff in charges) arrangements – already banned in UK
- arrangements should not incentivise hard selling (e.g., to meet monthly or annual sales targets)
- May be % of loan value (as for mortgages)



# Supervision – what will it mean?

For those carrying out specified activities

- Licence
- Annual reporting (online systems)
- Follow AML/CFT rules where required
- Surveys, occasional requests for information
- Visits
  - frequency depends on the risk classification of the business
  - medium impact, every 5-7 years; low impact, ad hoc

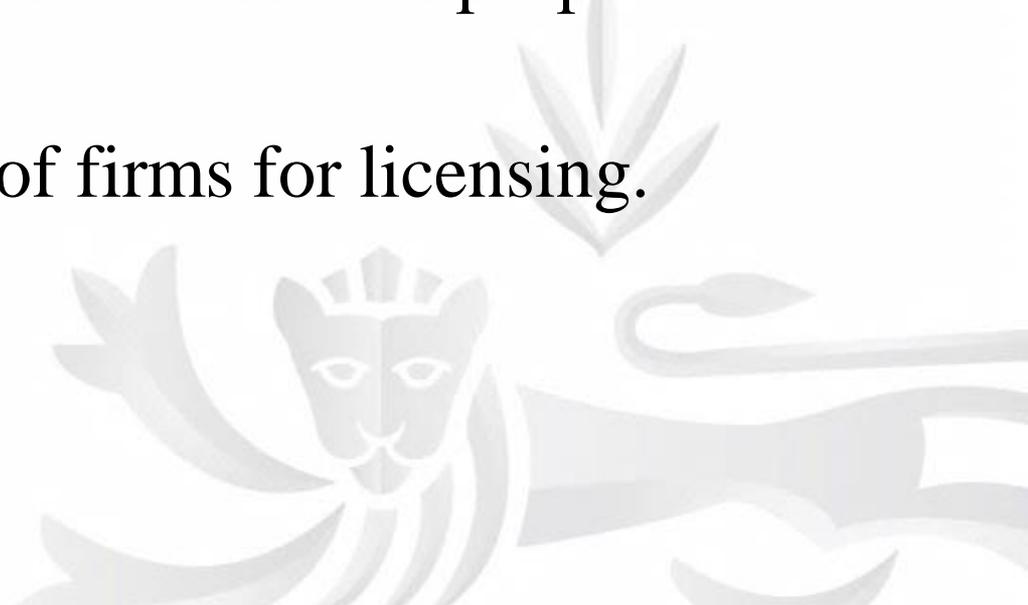


# Survey

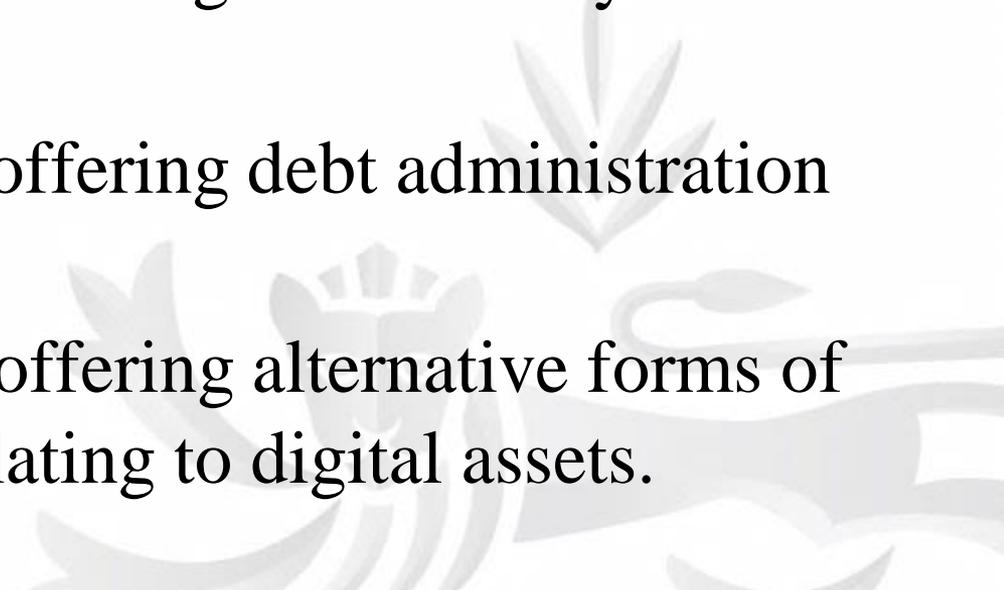


# Purpose of the Survey

- To gain a better understanding of the business currently being undertaken within the Bailiwick.
- To assist in guiding the Commission's proposed supervisory approach.
- To gauge the readiness of firms for licensing.



# Sections of the Survey

- Section A – businesses that lend or provide consumer credit.
  - Section B – businesses offering intermediary or broking services.
  - Section C – businesses offering debt administration services.
  - Section D – businesses offering alternative forms of financing or services relating to digital assets.
- 

- Please submit by cob on 24 November 2021
- Queries to Kathryn Bowley at [conduct@gfsc.gg](mailto:conduct@gfsc.gg)

