



HM Treasury

Regulation of Buy-Now, Pay-Later

Consultation on Draft Legislation

October 2024



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Consultation and how to respond

The purpose of publishing this consultation document is to enable any interested parties or stakeholders to make representations on the government's proposed legislation that will bring certain exempt interest-free credit agreements into Financial Conduct Authority (FCA) regulation. The consultation will be published on HM Treasury's website.

This consultation will be open for 6 weeks. Responses are invited by 11:59pm on 29 November 2024 and should be sent to BuyNowPayLater@hmtreasury.gov.uk. Responses will be shared with the FCA unless otherwise requested.

Chapter 1

Introduction

1.1 The term ‘Buy-Now, Pay-Later’ (BNPL) refers to a type of interest-free instalment credit which allows borrowers to split the cost of purchases into regular repayments not exceeding a 12-month period. As these agreements are unregulated, firms offering them do not need to be authorised and regulated by the FCA, nor do they have to comply with the requirements of the Consumer Credit Act 1974 (CCA).

1.2 Further information on the exemptions applying to BNPL are in lines 1.16 onwards in the “Background” section.

1.3 When offered by firms in a responsible manner, BNPL can be a helpful way for consumers to manage their finances and make purchases more affordable. Evidence suggests that consumers value the product’s interest-free nature, and, if used appropriately, it is often a more affordable way to borrow than other credit products.

1.4 However, it also has the potential to give rise to consumer harm. In February 2021, the *Woolard Review*¹ identified several risks from BNPL, including:

- How the product is promoted to consumers and presented as a payment option;
- Misunderstanding of the product by consumers, including the absence of information given to consumers about the features of the agreement;
- The absence of any requirements to undertake affordability assessments;
- The potential to create high levels of indebtedness;
- Inconsistency of treatment of customers in financial difficulty; and
- Impacts on the wider credit market including little visibility of BNPL debts on an individual's credit file.

1.5 The risks of detriment could be heightened, as the cohort of customers that use BNPL includes many borrowers who are potentially vulnerable. FCA research has found that adults with characteristics of

¹ [The Woolard Review - A review of change and innovation in the unsecured credit market](#)

vulnerability were more likely to report using BNPL, and that 44% of the most frequent users of BNPL were over-indebted.²

1.6 Given the widespread use of BNPL — with 14 million consumers having used it in the 6 months to January 2023³ — and the potential risks of the product, the government is concerned that BNPL sits largely outside of the remit of the FCA. While the FCA currently has some powers to intervene in the market (for example under the Consumer Rights Act 2015), these tools are insufficient to provide adequate consumer protections across the consumer journey.

1.7 The government is determined to take swift action to deliver protection for consumers. It also wishes to provide certainty for consumer credit firms, both those that solely offer BNPL and those operating in the existing regulated environment for other credit products.

1.8 The government intends to bring forward secondary legislation that would bring BNPL into FCA regulation as soon as possible. This consultation sets out the government's intended policy approach to regulation along with the draft legislation and invites comments from stakeholders.

1.9 The government's approach has been informed by five key principles:

- Consumers must have **access to simple, clear, understandable and accessible information**;
- Consumers should have **protection when things go wrong**;
- Consumers should only be **lent to if it is affordable**;
- Regulation should be **proportionate** to ensure continued access and choice; and,
- Regulation **must be introduced urgently** to ensure consumers are protected and the sector has certainty.

1.10 Once implemented, the framework the government is proposing will deliver on these principles through the following outcomes:

- **Clear information, in line with the Consumer Duty**⁴: the government will disapply certain information requirements in the CCA, that could lead to poor consumer outcomes and the FCA will be able to utilise their powers to apply more appropriate disclosure requirements.

² [Research Note: Deferred Payment Credit: findings from the Financial Lives Survey; Financial Lives 2022: Key findings from the FCA's Financial Lives May 2022 survey](#)

³ [Research Note: Deferred Payment Credit: findings from the Financial Lives Survey](#)

⁴ [Consumer Duty](#)

- **Key statutory rights:** consumers will benefit from key protections in the CCA, such as section 75.
- **Independent complaints handling:** the FCA will be able to set rules on complaints handling and consumers will be able to take complaints to the independent Financial Ombudsman Service (FOS).
- **FCA supervisory oversight:** BNPL firms will need authorisation from the FCA and will be subject to ongoing supervision.
- **Affordability and creditworthiness assessments:** the FCA will be able to set appropriate rules on assessing affordability and creditworthiness, reducing the risk that borrowing is unaffordable.

1.11 The government anticipates that the approach it proposes in this consultation will drive high standards of conduct among BNPL firms, ensure consumers receive clearer information and that they have access to strong protections. It will also allow continued access to a widely used product.

1.12 This consultation document sets out the government’s approach to regulating BNPL in more detail. It also responds to feedback HM Treasury received to its previous consultation that ran between February and April 2023.⁵

1.13 Given the need to act urgently — and because HM Treasury has already undertaken previous consultations on regulating BNPL and received responses from a broad range of stakeholders — this consultation will be open for 6 weeks. The government believes that this strikes an appropriate balance: it will provide stakeholders with sufficient time to comment on the government’s intended approach, while avoiding unnecessary delays to regulation.

1.14 Following this consultation and once it has considered feedback, the government will look to lay the necessary Statutory Instrument (SI) as soon as Parliamentary time allows. The SI will set a ‘Regulation Day’, at which point BNPL products will become regulated. In the draft SI, the ‘Regulation Day’ is 12 months from the SI being made. In the intervening period, the FCA will consult upon and finalise new rules to apply from ‘Regulation Day’. During this period, there will also be a window for firms to register for the Temporary Permission Regime (TPR) set out in Chapter 2.

Background

1.15 There is currently an exemption from consumer credit regulation under the Financial Services and Markets Act 2000 (FSMA) for credit agreements that meet the following conditions:

⁵ [Regulation of Buy-Now Pay-Later: Consultation on draft legislation](#)

- The agreement is a borrower-lender supplier agreement for fixed-sum credit;
- The number of payments to be made by the borrower is not more than 12;
- Those payments are required to be made within a period of 12 months or less; and
- The credit is provided without interest or charges.

1.16 This exemption is found in article 60F(2) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (the RAO) and contracts that meet these conditions are collectively known as 'deferred payment credit' (DPC).

1.17 The article 60F(2) exemption sought to ensure that low-risk credit agreements were not captured by regulation, particularly more informal payment arrangements offered by Small and Medium Enterprises (SMEs) for whom provision of financial services is not a primary business activity.

1.18 This exemption has been increasingly used to offer BNPL products. These products are typically taken out in relation to online shopping, where the consumer's relationship is with a third-party lender. BNPL products tend to comprise low-value agreements made with very short durations offered by third-party lenders.

1.19 As a result of the exemption, BNPL and other DPC agreements do not have to comply with the provisions of the CCA, nor do firms only offering these types of agreements need to be authorised and regulated by the FCA or comply with the FCA rules that apply to other consumer credit products. These agreements also do not come under the jurisdiction of the FOS, an independent body set up by Parliament to resolve complaints between consumers and financial services firms.

1.20 Alongside the rapid growth in the BNPL market, there have been increasing concerns around the product and potential harm posed to consumers through its use and lack of regulation.

1.21 In response to the *Woolard Review*, the government announced its intention to bring these unregulated BNPL products into regulation. To ensure HM Treasury had the powers to regulate BNPL and wider DPC products, the government tabled an amendment to the Financial Services Bill on 17 March 2021. This amendment (now in section 37 of the Financial Services Act 2021) gives the Treasury the power in an order under section 107(6) of the Financial Services Act 2012 to exclude provisions of the CCA from applying to unregulated BNPL agreements that are brought within the consumer credit regulatory regime.

1.22 The government also published two consultations (in October 2021 and February 2023) on a detailed approach to regulating BNPL.

However, it did not bring forward legislation before Parliament was dissolved in May 2024.⁶

What is the government proposing?

1.23 The government is keen to act with urgency to deliver regulation and sets out its detailed approach in this document. The government intends to bring into regulation DPC agreements where they are offered by a third-party lender. This will require firms to be FCA authorised in order to offer BNPL products and will allow the FCA to supervise and set rules for firms. Firms will also be subject to certain provisions of the CCA.

1.24 As set out above, it is important that communications by BNPL lenders maximise consumer understanding. They should ensure consumers understand the product they are taking out, can keep track of their payments during the agreement, and that they are engaged with in a supportive manner if they face financial difficulty.

1.25 The government believes that an information requirements regime based in FCA rules, drawing on the Consumer Duty, is the most effective way to achieve this. In the BNPL context certain provisions in the CCA are not relevant or necessary and/or may cause confusion for consumers if implemented.

1.26 The government therefore intends to disapply certain information requirements in the CCA that could lead to poor consumer outcomes for BNPL agreements.

Consumer Credit Act reform

1.27 The government recognises that some of the features of the CCA which are not suitable for BNPL may also not be achieving the best possible consumer outcomes for other credit products. In December 2022, the government launched a first stage consultation on a broader reform of the CCA.⁷

1.28 Respondents to that consultation broadly agreed that the CCA has served the UK well for many decades and continues to provide important protections, but that it has failed to keep up with developments of new products and the changing ways in which people engage with credit.

1.29 The government remains committed to reforming the CCA. It therefore wishes to work with stakeholders to consider how the CCA can be brought up to date with the modern consumer credit market and how it can bolster existing protections to improve consumer outcomes. The government intends to set out detailed reform proposals in a separate consultation in due course.

⁶ [Regulation of Buy-Now Pay-Later: consultation](#); [Regulation of Buy-Now Pay-Later: Consultation on draft legislation](#)

⁷ [Reform of the Consumer Credit Act: consultation](#)

1.30 The government recognises that reform of the CCA will take time to deliver and will require careful and considered engagement with stakeholders. Any changes are also likely to require primary legislation.

1.31 Given there is a pressing need to regulate BNPL to safeguard consumers now, the government believes it is right that the regulation of BNPL precedes any wider reform of the CCA. However, CCA reform will provide an opportunity to consider the future of consumer credit regulation more holistically.

1.32 While some CCA reform issues overlap with those being considered as part of bringing BNPL into regulation, the government and FCA are focussed through the BNPL regulatory process on developing a regime that is suitable for BNPL. The outcomes of this process should not be viewed as determinative of the regulatory regime that will ultimately be put in place for consumer credit more broadly through CCA reform. The FCA will undertake cost-benefit analyses and consumer research for both processes. It will also consult on and develop fair and proportionate protection for consumers in each.

Structure of the consultation

1.33 This document sets out the government's approach to regulating BNPL.

1.34 Chapter 2 asks for feedback on the draft legislation which will, subject to Parliamentary passage, deliver the government's final policy position. It sets out the government's position on:

- **Scope:** the government is capturing third-party lenders offering DPC agreements. However, in order to ensure consumers have continued access to useful and low-cost forms of credit, agreements such as those facilitated by employers or Registered Social Landlords will remain outside regulation.
- **Disclosure requirements:** the government does not intend to apply disclosure requirements in the CCA to newly regulated agreements. In turn, the FCA will be able to use its rulemaking powers to develop an appropriate disclosure regime in line with the Consumer Duty that will maximise consumer understanding.
- **Other regulatory controls:** the government intends to ensure that financial promotions communicated by unauthorised merchants who offer third party lender BNPL agreements will need to be approved by an authorised person and that credit broking activities that relate to BNPL agreements will be excluded from regulation unless the activity is carried out in the home of a customer.
- **Temporary Permissions Regime:** recognising the need to act urgently, the government intends to legislate for a TPR to ensure BNPL products are brought into regulation as soon as possible.

1.35 Chapter 3 sets out the regulatory and non-legislative controls that, though not covered in the draft SI, are expected to apply to BNPL agreements once regulated. This includes FOS protection and the ability for the FCA to make rules, including on appropriate creditworthiness and affordability assessments.

1.36 Chapter 4 sets out the next steps the government will take to deliver regulation with urgency. Chapter 5 seeks views on the potential impact of the proposed approach, including on those who share protected characteristics.

1.37 Finally, Annex A sets out in detail the feedback received to HM Treasury's February 2023 consultation. Annex A acts as a response to that consultation.

Chapter 2

Draft Legislation

2.1 This chapter explains the key features of the draft legislation published alongside this consultation and asks for feedback on the policy and drafting it sets out.

Scope

2.2 The exemption in article 60F(2) of the RAO exempts from regulation interest-free fixed-sum credit agreements repayable in 12 months or less and in 12 or fewer instalments. As explained in chapter 1, BNPL agreements fall into this exemption, but it can also capture other types of DPC lending.

2.3 The government previously sought stakeholder views on which types of exempt agreement should be captured by regulation. In particular, the government sought to gather information on the size and nature of the merchant-provided credit market (i.e. agreements provided directly by the provider of goods and services that the credit finances).

2.4 The government believes that, at this stage, regulation should be limited to agreements offered by third-party lenders (unless such an agreement fell into a specific anti-avoidance mechanism which is described in paragraph 2.10). Agreements provided directly by merchants (i.e. the provider of goods and services that the agreement finances) should continue to be exempt from regulation. Article 3(3) of the draft legislation aims to deliver this policy intention by adding a new category of regulated agreement — a Regulated Deferred Payment Credit Agreement — that would not be subject to the article 60F(2) exemption.

2.5 The government's rationale for its position on scope is to ensure that only agreements presenting a significant risk of potential consumer detriment would be captured in regulation. As part of its intended approach to regulation, it is keen to ensure that other activities falling within the article 60F(2) exemption remain outside the regulatory perimeter (such as invoicing and other useful, low-risk agreements offered by small, independent merchants whose main business is the sale or supply of goods and services).

2.6 The government acknowledges concern from some stakeholders that some merchants, such as large tech or e-commerce platforms, could offer their own BNPL-type agreements at scale, rather than through a third-party lender. The government is aware that this could lead to these providers having a competitive advantage over regulated

lenders. There is also a potential risk of consumer misunderstanding about whether a BNPL product is regulated or not.

2.7 At present, the government has not seen evidence of merchants offering BNPL-type agreements at a scale close to that of third-party lenders and most merchants continue to partner with third-party lenders. Moreover, given any lending would be undertaken at the risk of the merchant, there are strong incentives to ensure lending is affordable.

2.8 The government also thinks that it is important to ensure that low-risk, day-to-day transactions are not captured. Making the distinction between these low-risk transactions and the potentially higher-risk BNPL-like loans made by merchants at scale would be complex and likely require changes to more fundamental concepts in the consumer credit regulatory regime.

2.9 The government will therefore monitor developments in the merchant provided credit sector closely and will act if it sees evidence of significant growth in the market or significant potential for harm to consumers.

Anti-avoidance

2.10 The draft SI published in February 2023 included an anti-avoidance measure. This was designed to pre-empt a situation in which a third-party BNPL lender could avoid regulation by structuring agreements so that they technically become the merchant in the transaction they are financing, having purchased the goods from the original supplier. Stakeholders were generally supportive of this anti-avoidance measure and the government intends to insert a new paragraph 7A(b) into article 60F of the RAO. This sits in article 3(3)(b) of the accompanying draft SI.

Exemptions – insurance, registered social landlords, employer/employee lending

2.11 The government confirmed in its February 2023 consultation that it planned to continue to provide regulatory exemptions for certain arrangements not considered to present a substantive risk of consumer detriment. These included:

- **Agreements financing contracts of insurance:** this exemption was designed to allow consumers to spread the cost of insurance products and the government does not want to restrict access to insurance, particularly for lower-income consumers.
- **Registered social landlords:** some registered social landlords offer agreements to their tenants that currently fall under article 60F(2), for example to enable them to purchase white goods. Again, bringing these agreements into regulation could restrict access to a particularly useful form of credit.

- **Employer/employee lending:** employers often provide interest free agreements to support employees in purchasing travel season tickets or deposits for tenancies. These agreements should remain unregulated as they are low risk and offer a useful credit option for employees.

2.12 Stakeholders generally supported these exemptions, and the government intends to maintain them as part of its revised policy approach to regulation. Reflecting feedback, the government has expanded the exemption for arrangements facilitated by employers so that it now encompasses entities in the employer's wider group.

2.13 The exemptions are set out in the proposed article 60F(7B) of the RAO. This sits in article 3(3) of the draft legislation.

Information requirements

2.14 As set out in chapter 1, it is vital that BNPL regulation maximises consumer understanding of BNPL products and that consumers engage with the information firms provide. It must allow them to make informed decisions before entering into an agreement, over the course of the agreement, and especially when they are facing financial difficulty.

2.15 The government believes the best way to achieve this is through an information disclosure regime based in the FCA Handbook, rather than the CCA.

2.16 The CCA has detailed requirements regarding the information that should be provided by firms to consumers both before a credit agreement is entered into, and at key points during the life cycle of the agreement. The form, content and timing of information that must be provided to consumers is often heavily prescribed. Many stakeholders have argued that these provisions would not be appropriate for previously exempt BNPL given the features of the product. In particular, stakeholders have argued that:

- BNPL products are generally simple products that might not require the same extent of information as secured loans or credit products with more features or complex ramifications in case of breach;
- BNPL agreements tend to be offered online and are often taken out on a mobile device. Many consumers also stay informed about their product via smartphones. Stakeholders have argued the prescriptive form and content requirements in the CCA can be incompatible with the needs of consumers engaging with products online and/or on a mobile device, instead being designed to be engaged with in paper-form or on a large screen;
- BNPL agreements must be less than 12 months in duration, and most are shorter. Consumers are less likely to become disengaged with credit products that are for a short duration. Some CCA requirements set out the points in the agreement life cycle at which

certain documents should be served, which could lead to information being provided at inappropriate times;

- The products are, by their nature, interest-free. Many CCA requirements are designed around interest-bearing products. Some mandated information may be relevant for interest bearing products but is not for interest-free BNPL products; and
- The technical information required by the CCA can be difficult for consumers, particularly vulnerable consumers (which includes those with mental capacity limitations), to engage with and is not consistent with maximising consumer understanding.

2.17 The government recognises some of these stakeholder concerns and does not believe applying CCA disclosure requirements to BNPL agreements would be appropriate. Article 2 of the draft SI would therefore disapply a number of provisions for regulated BNPL agreements. The provisions disapplied by article 2 are set out in table 2.A.

2.18 The FCA will then develop a modernised disclosure regime for BNPL agreements. The FCA will develop its regime in line with the Consumer Duty, which came into force in July 2023. The Consumer Duty clarifies and raises expectations for the standard of care that all financial services firms must provide to consumers. Under it, firms must act to deliver good outcomes for retail customers, including by ensuring that communications equip consumers to make effective, timely and properly informed decisions, and that they provide support that meets consumers' needs and expectations throughout the life of the product or service.

2.19 The FCA will consider the suitability of its existing Consumer Credit sourcebook (CONC) requirements for BNPL lending. CONC contains requirements covering information that regulated firms should provide to 'adequately explain' a credit agreement to consumers and how firms should engage with consumers in financial difficulty.

2.20 Where the FCA thinks that the existing regime needs to be supplemented or altered, it may decide to make specific rules for BNPL agreements. These rules would be in line with the FCA's statutory objectives and would be subject to a consultation and full Cost Benefit Analysis.

2.21 The following section sets out in detail the provisions that the government intends to disapply.

2.22 The government recognises stakeholder concerns that many of the issues with CCA information requirements are broader than BNPL and often affect the whole consumer credit market. HM Treasury will consider information requirements more fully as part of wider CCA reform, with a view to developing a modernised and effective consumer credit regime that works better for the whole consumer credit market. As noted above, the government will announce next steps in due course.

Table 2.A Provisions from the CCA to be disapplied for BNPL

Category of information	Provisions
Pre-contract	55, 55C
The agreement	60, 61, 61A
Copies and statements	77, 77A, 77B
Variations	82
Early repayments	97, 97A
Arrears	86B, 86E
Default and Termination	76, 87, 98, 103

Pre-contract and the agreement

2.23 The CCA typically requires that consumer credit firms offering regulated credit agreements provide information before the consumer enters into the agreement and in the agreement itself. The intention behind this is to allow consumers to compare products and to ensure they fully understand the key features of the product and terms of the agreement.

2.24 There are two broad categories of information that are required to aid the consumer’s understanding of the product:

- **Pre-contract credit information (PCCI):** Under section 55, a customer must be provided with pre-contractual information, the form and content of which is prescribed in the Consumer Credit (Disclosure of Information) Regulations 2010. This is designed to enable them to compare different credit products and give an understanding of the key features of the agreement. The lender must use a prescribed form which include statutory references, legal terminology and prescribed statements.
- **The Agreement:** section 60 requires that an agreement must contain key information mandated by the Consumer Credit (Agreements) Regulations 2010. Section 61 sets out prescribed requirements for signatures by both lender and consumer. Section 61A requires that a lender must provide a copy of the agreement to the consumer.

2.25 As noted in Annex A, respondents to government’s February 2023 consultation on draft legislation for BNPL were broadly supportive of its proposal to disapply requirements on PCCI and highlighted the potential benefits of an FCA rules-based regime for PCCI requirements. Stakeholders have noted that the current PCCI requirements are confusing for consumers in the context of taking out BNPL agreements. Mandatory requirements on the form of information mean it could be difficult for consumers to engage with information on their phone, which is a common method for taking out a BNPL agreement.

2.26 Some stakeholders, particularly BNPL firms, thought the CCA's requirements on the form and content of agreements should also be disapplied. Firms thought that the CCA requirements on the content and execution of agreements were overly burdensome and would severely impact the BNPL customer journey, while also being of little material benefit for consumers given their length and inaccessibility. Some of the information required in the agreement is also irrelevant to BNPL products, such as information on interest rates. Non-BNPL lenders agreed that section 60 and 61 did not deliver the right consumer outcomes but considered that the government should give thought to immediate amendments for the content of agreements for all regulated credit products.

2.27 The government agrees that much of the information required in the PCCI and content of agreements is complex and difficult for consumers to engage with, and that some of the information is of little relevance to BNPL agreements. The inclusion of some of the required information for BNPL agreements may be more likely to confuse than aid customers' understanding. The government therefore proposes to disapply these provisions for BNPL agreements.

2.28 The government notes that the Consumer Rights Act 2015 already applies to agreements. The CRA regulates the fairness of the terms of contracts for goods and services between traders and consumers and applies to consumer credit. Several relevant provisions also apply beyond the CCA to currently regulated agreements:

- **CONC:** CONC currently requires that lenders provide borrowers with an 'adequate explanation' of the product. For already-regulated consumer credit products this sits alongside the CCA PCCI requirements but is less prescriptive, giving firms more flexibility on the form and phrasing of the document.
- **FCA Principles:** firms must comply with the Consumer Duty (Principle 12), requiring them to ensure consumers have the right information at the right time to make informed decisions. They also must comply with the FCA's Principle on communications with clients (Principle 7) which requires that a firm must communicate in a way that is clear, fair and not misleading.

2.29 The FCA will be able to consider whether and how existing CONC and FCA Principles should apply for BNPL and whether further rules are appropriate.

2.30 The government therefore thinks that a more consumer-focussed pre-contract and contractual disclosure regime can best be delivered by disapplying sections 55, 55C, 60, 61 and 61A.

Question 1: Do you have any comments on the proposed approach and/or drafting disapplying provisions on pre-contractual information (sections 55 and 55C)?

Question 2: Do you have any comments on the proposed approach and/or drafting disapplying provisions on the form and content of agreements (sections 60, 61 and 61A)?

During the course of the agreement

2.31 The CCA also mandates information that needs to be provided to consumers during the life cycle of a typical regulated credit agreement. Requirements that would otherwise apply to BNPL agreements include:

- **Copy agreements, statements of account and periodic statements:** sections 77, 77A and 77B set out information that must be provided to consumers in certain circumstances during the life cycle of their agreement. Section 77A imposes an obligation on firms to provide annual statements, while 77 and 77B allow the consumer to request information in certain circumstances.
- **Variation of agreements:** section 82 details how firms can vary agreements and sets out the information that needs to be provided to consumers.
- **Early repayment:** sections 97 and 97A set out the information that firms must provide where the consumer requests to make a full or partial repayment. The timing, content and format of the information is prescribed.

2.32 The government believes that these provisions would not work well for BNPL products and could lead to information being given to the consumer that is confusing, inappropriate or not provided at the right time.

2.33 The purpose of sections 77, 77A and 77B is to ensure that consumers receive or can request statements so they can keep track of their borrowing, including their repayments.

2.34 The government believes it is important that consumers have access to simple and clear information about their account to help them manage their finances effectively. However, it does not believe applying these provisions is the best way to achieve that outcome for currently exempt BNPL agreements.

2.35 Firms offering BNPL agreements generally provide digital accounts that allow consumers to keep track of their payments. Requiring lenders to provide lengthy and potentially unsuitable prescribed documents via digital mediums is unlikely to maximise consumer understanding and engagement.

2.36 The government also notes that statements under section 77A are not appropriate in the context of a BNPL agreement, given the short duration of the product. The government therefore proposes to disapply these provisions, with a view to the FCA making use of its powers to set appropriate rules for BNPL.

2.37 Section 82 (variation of agreements) covers scenarios where an agreement is amended, either through mutual agreement or unilaterally by a firm under a contractual term.

2.38 Section 82(1) provides that the consumer must be given notice in writing of a unilateral variation of the agreement by the firm. The government notes that the Consumer Rights Act 2015 already provides for unilateral variations in consumer contracts within the Unfair Terms provisions.

2.39 Section 82(2) covers variations of an agreement which is agreed between the firm and consumer, so called 'modifying agreements'. A new agreement is required to be executed by the lender which replaces the original agreement. This requires the same level of disclosure of information as at the beginning when a credit product is first taken out. As noted above, the government intends to disapply the CCA requirements on pre-contract information and agreements for newly regulated agreements. Feedback from industry has also noted that modifying agreements are complex and can often lead to unintended mistakes, meaning firms are reluctant to engage in such variations.

2.40 The government intends to disapply section 82. Existing contractual law principles will apply where a change is agreed between firm and consumer, for example where a consumer agrees to go on to a repayment plan. The FCA may also consider it appropriate to add further rules to its FCA Handbook to cover BNPL agreements varied by mutual agreement.

2.41 Finally, the government proposes to disapply sections 97 and 97A. Consumers will continue to have a right to repay their agreement early under section 94 and will be able to access their account information to see what amount needs to be repaid. Feedback has noted that the prescriptive information and calculations required under sections 97 and 97A which relate to rebates or interest and fees as part of the settlement process are not relevant and are confusing to consumers in the context of BNPL products which do not charge interest or fees.

2.42 The FCA will be able to consider how consumers are properly kept abreast of developments during the course of their agreement. Under the Consumer Understanding outcome of the Consumer Duty, firms are required to provide information consumers need, at the right time, and presented in a way they can understand. Similarly, the Consumer Support outcome requires firms to provide a level of support that meets consumers' needs throughout their relationship with a firm. The FCA may also wish to consider whether provisions should be added to CONC.

Question 3: Do you have any comments on the proposed approach and/or drafting disapplying provisions on ongoing information requirements (sections 77, 77A and 77B)?

Question 4: Do you have any comments on the proposed approach and/or drafting disapplying provisions on varying agreements (section 82)?

Question 5: Do you have any comments on the proposed approach and/or drafting disapplying provisions requiring prescribed information on early repayment (sections 97 and 97A)?

Arrears, default and termination

2.43 The CCA also sets out information that firms should provide where consumers are behind on repayments and where the firm wants to take enforcement action under the agreement. Requirements include:

- **Notices of Sums in Arrears (NOSIAs):** under section 86B, a consumer must be sent a NOSIA at prescribed times when they are falling behind with repayments. The form and content of a NOSIA is prescribed in the Consumer Credit (Information Requirements and Duration of Licences and Charges) Regulations 2007.
- **Notices of default sums (NODS):** under section 86E, a firm must provide a NODS, in the prescribed form, to a customer when a default sum has become payable under the agreement. The form and content of a NODS is prescribed in the Consumer Credit (Information Requirements and Duration of Licences and Charges) Regulations 2007.
- **Default notices:** in section 87 a consumer must be provided with a default notice in paper form (electronic disclosure is not permitted) if a lender wishes to terminate the agreement and demand the full repayment of sums owed following a default. The form and content is prescribed in secondary legislation in the Consumer Credit (Enforcement, Default and Termination Notices) Regulations 1983.
- **Notices in non-default cases:** section 76 requires notice to be given, in the prescribed form, at least 7 days before enforcing a contractual term of a regulated agreement in non-default cases.
- **Termination notices:** section 98 sets out that firms must provide a notice in the prescribed form if they wish to terminate an agreement in non-default cases.
- **Termination statements:** section 103 requires certain information to be provided to a consumer upon the consumer's request after an agreement has been terminated.

2.44 The government believes it is vital that consumers in financial difficulty are presented with clear, timely and useful information and are supported to find an appropriate solution depending on their circumstances. The government does not believe the CCA requirements mentioned above would deliver on this for BNPL.

2.45 Some of these provisions are particularly unsuited to BNPL agreements. For example, default notices must be sent in paper form, which is inconsistent with products that tend to be taken out and managed digitally. Similarly, some stakeholders have argued that the requirement to send NOSIAs after 2 missed payments is impractical for products that often have only two or three payments.

2.46 The government notes that the FCA has extensive rules on how firms providing typical regulated credit agreements should engage with customers in financial difficulty. This includes:

- **CONC:** CONC sets out in chapter 7 the steps firms should take to support borrowers in financial difficulty, including: requirements to provide borrowers with information on the amount of any arrears, to offer forbearance and payment holidays, and how firms should engage with particularly vulnerable consumers. In April 2024, the FCA published rules to strengthen protections for borrowers in financial difficulty, which will take effect from November. These requirements should lead to firms engaging with borrowers in, or approaching, financial difficulty at an earlier stage when they come into effect. The FCA will be able to consider how such rules should apply in the context of newly regulated agreements.
- **Consumer Duty:** the Consumer Duty requires that communications from firms equip consumers to make effective, timely and properly informed decisions, and that firms provide support that meets consumers' needs and expectations throughout the life of the product or service.

2.47 The government therefore intends to disapply the provisions in the CCA relating to arrears, default and termination communications. The FCA would also be able to consider how its existing rulebook requirements should apply to BNPL and supplement them with further provisions if appropriate and necessary.

2.48 More broadly, a range of stakeholder concerns have been raised about the efficacy of default, arrears and termination requirements in the CCA for a wider range of credit products. Concerns raised include the potential complexity of the documents, as well as the potential impact they could have on the mental health of recipients. The government will look to consider provisions on default and arrears more holistically as part of CCA reform.

Question 6: Do you have any comments on the proposed approach and/or drafting disapplying provisions relating to arrears, default and termination (sections 76, 86B, 86E, 87, 97 and 103)?

Consequential amendments

2.49 As a result of disapplying the provisions above, some minor consequential changes would need to be made to other provisions in the CCA to ensure they continue to apply as intended to newly regulated BNPL agreements.

Time Orders

2.50 In particular, the government anticipates amendments would need to be made to section 129 (Time Orders). This provision enables the court, if it is just to do so, to provide more time for payment under an agreement to reasonably reflect the customer's ability to repay the debt within a reasonable period. A consumer is able to apply for a Time Order if they have been served with notices under sections 76, 86B, 87 or 98.

2.51 Absent any amendments to section 129, a consequence of the disapplication of these provisions would be that a consumer would not be able to apply to a court for a Time Order (though it would remain open to the court to consider making a Time Order on a simple application for enforcement, without the need for a formal application by the debtor). The government's understanding is that Time Orders are rarely used in practice, given the cost to a consumer of applying through the courts, and the presence of more recently introduced consumer safeguards, such as Breathing Space and the FCA's rules on forbearance. However, it is keen to retain their effect as far as possible.

2.52 The draft SI therefore contains drafting in article 2(21) that ensures a consumer of newly regulated BNPL is able to apply for a Time Order where they are informed that their lender intends to take certain enforcement action or terminate the agreement. This will ensure consumers can apply for a Time Order in broadly the same circumstances as they would be able to for typical regulated agreements.

2.53 For regulated agreements, a consumer can currently apply for a Time Order where they receive a NOSIA, which is provided when a consumer is two payments in arrears. As the requirement to serve a NOSIA under section 86B will be disapplied for BNPL (with the FCA instead being able to set rules on how lenders should engage with consumers in financial difficulty), a consumer would not be able to apply for a Time Order but it would be open to a court to make such an order if it considered it to be appropriate in the circumstances.

Death of the debtor

2.54 The government also proposes an amendment to section 86. Section 86 requires a lender to apply for a court order if it wishes to take certain enforcement action following the death of the debtor. The changes set out in article 2(12) of the SI ensure that BNPL lenders would be subject to this requirement.

Question 7: Do the amendments to section 129 and section 86 sufficiently retain the effect of these provisions for BNPL agreements?

Question 8: Are stakeholders aware of any further consequential amendments that may arise from the disapplication of CCA information requirements?

Sanctions

2.55 As set out above, the government believes that many of the information requirements in the CCA would, if applied to newly-regulated BNPL, not maximise consumer understanding. The government therefore intends to move to a disclosure regime primarily based in FCA rules and disapply certain CCA provisions from BNPL.

2.56 One consequence of disapplying the provisions above is that some of the sanctions in the CCA will fall away. The CCA sets out a range of sanctions that apply to certain breaches by the lender. These are:

- **Unenforceability without a court order:** this type of sanction places restrictions on the steps firms can take to collect debts, unless a firm successfully obtains a court enforcement order. For example, section 65 sets out the consequences of ‘improper execution’ of an agreement.
- **Unenforceability during breach:** this type of unenforceability provision places restrictions on the debt collection activities that can take place during the period of the breach.
- **Disentitlement:** this sanction results in no liability for consumers to pay interest or default charges that accrue during the period of non-compliance.

2.57 Some stakeholders argue that these provisions are important to provide a strong deterrent against breaches. However, others believe these sanctions are disproportionate and apply even where there are only trivial breaches that do not lead to any meaningful consumer harm. They note that these provisions were developed before consumer credit was subject to FCA oversight and are not in keeping with modern financial services regulation.

2.58 These provisions could not be replicated in FCA rules due to limitations on the FCA’s statutory powers. In general, a breach of an FCA rule cannot make an agreement unenforceable.⁸ While the FCA’s powers could be expanded, doing so would require primary legislation which could not be delivered in the time frames the government is seeking to work to.

2.59 The government additionally notes that the sanctions set out above are likely to be of less relevance to BNPL agreements, given they are shorter-term, interest free and generally lower value. The government also understands that court-based enforcement action is much more likely to be taken by lenders where they relate to higher-value agreements, such as motor finance agreements, rather than small or unsecured agreements.

⁸ There are limited circumstances in which credit agreements can become unenforceable as a result of breaching FCA rules, for example where a credit agreement breaches rules on the cost of credit.

2.60 The government expects that robust consumer protections will exist under the proposed regime, including strong incentives for firms to comply, such as:

- **FCA oversight:** currently unregulated firms will have to seek authorisation from the FCA. This provides the FCA with a gateway check to prevent unsuitable firms from entering the market. Firms will then be subject to ongoing supervision to ensure compliance with the FCA regime.
- **CONC:** The FCA will consider how to apply its existing CONC rulebook and whether new rules are necessary for BNPL. In addition to the possibility of FCA enforcement for breaches of its rules, customers have a private right of action against lenders for alleged breaches of CONC under section 138D of the Financial Services and Markets Act 2000 (FSMA).
- **Consumer Duty:** the Consumer Duty requires firms to rectify any breaches of rules as soon as they are identified and provide consumers with appropriate redress.
- **FOS:** the FCA will be able to apply the rules in its complaints handling handbook (known as “DISP”) and consumers will be able to take complaints to the FOS.

2.61 The government therefore believes that these CCA sanctions can fall away for BNPL agreements without a significant impact on consumer protection. HM Treasury will consider the future of the CCA’s sanctions as part of its wider work on CCA reform.

Voluntary compliance with disapplied CCA provisions

2.62 The government is aware that some lenders offering currently-exempt BNPL agreements do so alongside other credit agreements which are already regulated. If given a choice, these mainstream lenders may choose to provide information in accordance with the CCA’s information requirements for their current BNPL lending rather than with the government’s proposed BNPL information regime, to simplify internal systems and processes.

2.63 The government does not intend to make legislative provision to allow firms to voluntarily comply with the CCA’s information requirements regime for their newly regulated BNPL products in preference to the BNPL information regime being developed through this process. The wider approach set out in this consultation is to allow the FCA to decide what information requirements should apply to newly regulated BNPL agreements. Consistent with this approach, it would be for the FCA to determine whether the use of CCA documents would be consistent with its rules.

Small Agreements

2.64 Some parts of the CCA do not apply to 'small agreements'. A small agreement is defined in section 17 of the CCA as a regulated consumer credit agreement for credit not exceeding £50, other than a hire-purchase or conditional sale agreement.

2.65 Some of the elements of the CCA and CONC which do not apply to small agreements include:

- part 5 of the CCA, which includes provisions relating to precontractual negotiations made by or on behalf of a lender, and the form and content of agreements;
- section 77A on the provision of statements in relation to fixed-sum credit agreements;
- provisions relating to sums in arrears and default sums in sections 86B, 86C and 86E;
- CONC 4.2.5 on pre-contractual adequate explanations; and
- CONC 5.2A on creditworthiness assessments.

2.66 As BNPL is frequently used for agreements below £50, the government set out in its February 2023 consultation that the intention was that BNPL agreements of any amount would not be small agreements exempt from these CCA provisions. Article 2(2) of the draft legislation would substitute a new section 17(1)(a) into the CCA which specifies that newly regulated agreements which do not exceed £50 are not small agreements.

2.67 The original intent was to ensure consistency in treatment for BNPL agreements above and below £50. While the government is now proposing disapplying many provisions in Part V, as well as sections 77A, 86B and 86E, the drafting in article 2(2) is still needed to ensure consistency between BNPL agreements above and below £50. The government has retained this provision in the updated SI.

Other regulatory controls

2.68 The draft SI also sets out the non-CCA regulatory controls that should apply to newly regulated BNPL products. These controls were contained in the previous draft SI consulted on and, broadly speaking, the government intends to implement these with few changes.

2.69 In particular, the draft SI sets out controls relating to:

- credit broking
- financial promotions
- distance marketing

Credit broking

2.70 Under the existing regulatory framework, where a business introduces a customer to a lender with a view to the customer entering into a regulated credit agreement, the business will be undertaking the regulated activity of credit broking (unless an existing exclusion applies). The government thinks that merchants which offer newly regulated agreements as a payment option or otherwise engage in activities that would fall under article 36A should not be brought into credit broking regulation. The government has concerns that regulating these merchants would impose significant costs on retailers and possibly lead them to cease offering BNPL. There will also be other protections in place to mitigate the risk of consumer detriment from merchants not being regulated, such as the Financial Promotions Order.

2.71 However, the government has previously set out that domestic premises suppliers that seek to broker newly regulated BNPL agreements should be regulated, reflecting the higher risk of pressure selling that may take place in a consumer's home.

2.72 This policy position on credit brokers and domestic premises suppliers is achieved in the proposed new article 36FB of the RAO, which would be inserted by article 3(2) of the draft legislation. This provision has been retained from the previous draft SI.

Financial promotions

2.73 When BNPL providers become regulated, merchants offering a BNPL payment option would not be subject to the section 21 FSMA 2000 restriction on financial promotions unless the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 (the Financial Promotions Order) is amended. Without making this amendment, these merchants would not have to get their financial promotions approved by an authorised person.

2.74 This is because of article 15 of the Financial Promotions Order. The practical affect of Article 15(1) is that a merchant offering a communication which is made to or for the purposes of introducing a consumer to an FCA authorised lender is exempt from the financial promotions restriction.

2.75 In lieu of full credit broking requirements — and to mitigate the risk of potential consumer detriment — the government intends that unauthorised merchants will be required to obtain approval for promotion of BNPL agreements from an authorised person with financial promotions permissions unless an exemption applies. Since the introduction of the gateway for firms who approve financial promotions, the approver must either have applied for authorisation to

approve financial promotions before 7 February 2024 or have been assessed by the FCA and approved under section 55NA of FSMA.⁹

2.76 As outlined in the last consultation, we expect that in practice BNPL providers may more often prefer to issue their own financial promotions for use by merchants with whom they partner. This can be undertaken by firms authorised under Part 4A of FSMA.

2.77 As TPR firms will be deemed authorised under Part 4A (discussed further below in ‘Temporary Permissions Regime’), they will also be able to issue financial promotions for use by their merchants. However, being in the TPR does not deem authorisation as a financial promotion approver under section 55NA, so firms in the TPR will not be able to approve bespoke financial promotions developed by merchants.

2.78 The proposed article 5 of the draft legislation seeks to achieve this by amending the Financial Promotions Order. Article 5 has been retained from the previous draft legislation. Respondents to the February 2023 consultation had little substantive feedback on this provision.

Distance marketing

2.79 The Financial Services (Distance Marketing) Regulations 2004 (DMRs) broadly capture all financial services provided under a distance contract between a supplier and a consumer (including unregulated ones). However, some elements of the DMRs do not apply to contracts made by an authorised firm if those contracts constitute or are part of a regulated activity carried on by that firm.

2.80 The effect of this is that currently the DMRs do not apply to distance contracts offered by an authorised supplier of financial services. This means that the DMRs will not apply to lenders who enter into newly regulated agreements, nor will they apply to domestic premises suppliers who broker those agreements (who will be intermediaries which are authorised persons).

2.81 Under the proposed approach to exempt merchants from credit broking regulation where they are not a domestic premises supplier, without amendment the DMRs would apply to merchants. This is because they will not be engaging in a regulated activity and therefore not be an authorised person. The effect of this would be that unauthorised merchants would have to provide information in accordance with the DMRs and authorised lenders would have to provide information in accordance with FCA rules, leading to duplication.

2.82 The previous SI therefore included a provision in article 4 of the draft legislation. This would disapply the DMRs for unauthorised brokers where information is disclosed by authorised lenders in accordance with the FCA's rules on distance marketing for authorised persons.

⁹ [PS23/13: Introducing a gateway for firms who approve financial promotions | FCA](#)

2.83 Some respondents to the previous consultation flagged concerns that the drafting could have meant that a retailer — as an intermediary — would be in breach of regulations 7 and 8 of the DMRs if a third-party BNPL firm had not properly complied with FCA rules on distance marketing. They argued that this could lead to retailers needing to actively monitor BNPL firms' compliance with FCA rules on distance marketing in order to benefit from the disapplication of information provision requirements in accordance with the DMRs. The government has therefore altered article 4 to make clear that this is not the case.

Question 9: Do you have any comments on the proposed legislative approach to DMRs, credit broking and the Financial Promotions Order?

Temporary Permissions Regime

2.84 The government recognises the breadth of stakeholder support for BNPL to be brought into regulation as soon as possible. To achieve this, the government intends to put in place a TPR, which is set out in Part 4 of the draft SI.

2.85 A TPR allows unauthorised firms to continue to operate their BNPL lending until their application for full authorisation has been processed. Without a TPR, an unauthorised firm would have to suspend operations from the point of BNPL becoming a regulated activity until it had completed the FCA's authorisation process — either greatly disrupting those firms and their customers or requiring the government to delay the implementation of regulation until all unregulated firms had been assessed. The intention is that firms in the TPR would be deemed authorised under part 4A of FSMA by the FCA. As a result, they would be permitted to undertake the relevant regulated activities relating to newly regulated agreements and would need to comply with the relevant FCA rules. The relevant regulated activities will be:

- entering into a regulated DPC agreement as lender;
- exercising, or having the right to exercise, the lender's rights and duties under a regulated DPC agreement; and
- credit broking (for domestic premises suppliers that offer newly regulated agreements).

2.86 The effect of the provisions in part 1 of the SI is to have two stages in the introduction of FCA rules. The first (i.e. "Initial Commencement Date") will be to permit the FCA to set up the TPR and to consult on and make rules relating to newly regulated agreements.

2.87 The second will be to introduce the substantive legal changes that removes the current exemption for BNPL (i.e. 'Regulation Day'), by which point the registration for the TPR will be complete and the new FCA rules will be in force. 'Regulation Day' will be 12 months following the Initial Commencement Date.

2.88 In order to enter the TPR, firms will have to have been engaged in the activity at the Initial Commencement Date, registered for the TPR, and have paid a registration fee to be set by the FCA.

2.89 Following 'Regulation Day', firms in the TPR will be able to apply for full authorisation from the FCA, likely within a landing slot set by the FCA. Firms will be able to continue to make use of the TPR until their authorisation application is approved, refused, withdrawn or if they fail to apply within their designated landing slot.

2.90 Lenders that would otherwise exit the TPR will be able to retain for a period a temporary permission for exercising, or having the right to exercise, the lender's rights and duties under a regulated credit agreement under article 60B(2) of the RAO (see article 10(3)(c) and (d) of the SI). Those lenders will continue to be deemed authorised. Alternatively, firms will be able to dispose of their loan books to an authorised third-party should they wish.

2.91 Given the maximum term of newly regulated agreements is 12 months, the government's view is that there should be a time limit for the duration of this retained temporary permission for servicing agreements under article 10(3)(c) and (d) of two years. This will ensure that lenders will be able to service any agreements that have balances beyond the normal contractual term, for example where payment arrangements are in place. Firms will be able to cancel their temporary permission for servicing newly regulated agreements sooner than the two years if they no longer require it.

2.92 As set out at paragraphs 2.71-2.72 above, firms who offer newly regulated agreements in customers' domestic premises will be required to obtain FCA authorisation. These domestic premises suppliers will also be able to register for the TPR to operate from 'Regulation Day' until their application is assessed.

2.93 The legislative provisions which enable the proposed treatment of agreements made post-'Regulation Day' for firms in the TPR are set out at article 11 in the draft legislation.

2.94 Stakeholders should note that the draft SI published in February 2023 contained similar drafting and only minor amendments have been made since then.

Question 10: Do you have comments on the proposed legislation that seeks to implement the TPR?

Chapter 3

Regulatory controls not covered in the draft legislation

3.1 In addition to the provisions in the draft legislation, existing elements of the consumer credit regulatory regime will apply to newly regulated agreements by virtue of the exemption being removed. This chapter sets out some of the key pillars that the government intends will apply, including:

- section 75 of the Consumer Credit Act
- creditworthiness and affordability assessments
- credit reporting
- Financial Ombudsman Service

Section 75 of the Consumer Credit Act

3.2 Section 75 sets out that a creditor is jointly and severally liable for breaches of contract or misrepresentation by suppliers of goods or services financed by a debtor-creditor-supplier agreement.

3.3 To fall within section 75, there must be an agreement to finance a transaction between a debtor and a third-party supplier and there must be existing arrangements between the creditor and the supplier. Section 75 applies to purchases valued between £100 and £30,000.

3.4 Section 75 is a well-known and widely used consumer protection and the government intends for this to apply to newly regulated agreements.

Responsible lending

3.5 The FCA requires firms to carry out a reasonable assessment of the creditworthiness of a prospective borrower before entering into a regulated credit agreement with them. This is based on the principle that money should only be lent to a consumer if they can afford to repay it.

3.6 Under FCA rules, when undertaking creditworthiness assessments, firms must assess each customer's creditworthiness by considering not just whether a customer will repay, but also the

customer's ability to repay affordably and without significantly affecting their wider financial situation.

3.7 As an independent regulator, it will be for the FCA to decide how rules on creditworthiness should be applied to newly regulated agreements.

3.8 Firms will be required to follow the FCA's mental capacity guidance as set out in CONC 2.10, in addition to meeting Consumer Duty requirements.

Credit reporting

3.9 The government believes that it is important for consumer credit firms to report data on their customers' agreements to credit reference agencies (CRAs) to support responsible lending practices. While there is currently no regulatory requirement for regulated firms to share such data, in its Credit Information Market Study¹⁰ the FCA proposed a mandatory data sharing requirement with designated CRAs for regulated firms.

3.10 The government thinks this will be a positive step towards boosting the coverage and consistency of information in consumers' credit files and believes that enhanced data on BNPL agreements will be beneficial to users of BNPL and other credit products once the product enters the FCA's remit.

Financial Ombudsman Service

3.11 The FOS is an independent body set up by Parliament to resolve complaints between consumers and financial services firms.

3.12 The FOS's role is to independently resolve certain disputes quickly and with minimum formality on the basis of what it believes is fair and reasonable in all the circumstances of the case. It is free for consumers to use and provides an alternative to the courts.

3.13 The FCA will consult on applying complaint handling rules to firms providing BNPL and enabling BNPL customers to refer complaints to the FOS. Having the FOS consider complaints will help build consumers' trust that they will get fair outcomes if they complain.

¹⁰ <https://www.fca.org.uk/publication/market-studies/ms-19-1-3.pdf>

Chapter 4

Equalities and Impact Assessment

Impact Assessment

4.1 The government's proposed amendments to the regulatory framework to bring agreements into regulation will impact lenders, consumers and merchants. The government is developing an impact assessment which considers these impacts, in line with requirements prior to laying legislation. In particular, this Impact Assessment will consider the costs to firms of coming within the regulatory perimeter, compliance with CCA provisions, and the benefits to consumers and households from the product being regulated. When developing its rules that will apply to newly-regulated BNPL products, the FCA will be required to carry out a full Cost-Benefit Analysis.

4.2 The government asked for feedback from stakeholders on the potential impact of its proposals set out in the February 2023 consultation. The detailed feedback it received is set out in Annex A. While the government received useful feedback on potential impacts on key actors, it received little quantitative data. The quantitative data it did receive was highly speculative.

4.3 The government welcomes any further evidence and data from stakeholders on the potential short-term implementation costs and benefits, as well as longer term costs and benefits that might result from the legislative aspects of the regulatory regime.

Question 11: What do you expect the impacts to be of this proposed legislation on: providers of agreements that will be brought into regulation, consumers that use them and merchants that offer them as a payment option?

Equalities Impact

4.4 When developing a policy proposal, the government must comply with the Public Sector Equality Duty (PSED) in section 149 of the Equality Act 2010. The PSED requires the government to have due regard to the need to:

- eliminate unlawful discrimination;
- advance equality of opportunity between people who share a protected characteristic and people who do not share it; and

- foster good relations between people who share a protected characteristic and people who do not share it when carrying out their activities.

4.5 The PSED protected characteristics are age, disability, race, gender reassignment, marriage and civil partnership, pregnancy and maternity, religion or belief, sex and sexual orientation.

4.6 Evidence indicates that some persons sharing particular protected characteristics may be more likely to use BNPL. For example, FCA research shows that 34% of those in a minority ethnic group used BNPL in the 6 months to January 2023, compared to 26% who report a white ethnicity. In the same research 28% of women reported using BNPL, compared to 26% among men.

4.7 In addition, survey findings from Citizens Advice suggested that whilst 41% of the 2,700 respondents who have used BNPL struggled to make a payment, this rose to 52% amongst respondents from a minority ethnic group (excluding white minorities), 60% of respondents with a disability and 87% of transgender respondents. Furthermore, the survey indicated that while 26% of respondents who have used BNPL generally have regretted using the product, this rises to 31% amongst those respondents from the black ethnic group, 39% of respondents with a disability and 63% of transgender respondents.

4.8 This evidence suggests that some consumers sharing particular protected characteristics may be at a higher risk of suffering detriment.

4.9 However, it is also important to ensure that regulation does not have the unintended consequence of limiting access to interest-free credit agreements, which may provide specific benefits for consumers sharing those protected characteristics. In addition, previous consultation responses suggested BNPL may not be perceived as credit by some customers, as an interest-free product may also be considered Sharia-compliant. The government therefore thinks that, when appropriately provided, the features of BNPL may increase financial inclusion amongst some people sharing particular protected characteristics, by providing a means to pay for goods or services in instalments that might not be available through other regulated credit agreements.

4.10 The majority of responses to the government's previous consultation agreed that regulating BNPL would have a beneficial impact on those who share protected characteristics by giving them greater protections. However, several responses queried whether regulation could lead to a reduction in access to interest-free credit for more vulnerable cohorts, some of whom potentially share protected characteristics (though particular characteristics were not specified).

4.11 The government thinks that the new proposals outlined in this consultation would help to mitigate the risks of potential consumer detriment crystallising for persons with protected characteristics that use newly regulated BNPL agreements. It will do this by ensuring that firms are subject to high standards of conduct regulation and by

ensuring consumers have access to clear information and protections. However, the approach set out is also proportionate and will ensure that consumers, including those sharing particular protected characteristics, will continue to be able to access useful, interest-free products.

4.12 The government would welcome further insight from stakeholders on the potential impact of regulation on those who share protected characteristics.

Question 12: Do you agree with the provisional assessment that, on balance, the government's proposed proportionate approach to reform mitigates the negative impacts on those sharing particular protected characteristics and retain the positive equalities impacts of the products?

Question 13: Do you have any further data you can provide on the potential impacts on persons sharing any of the protected characteristics?

Chapter 5

Next steps

5.1 The government believes the approach set out in this consultation delivers on the five principles outlined in chapter 1. It believes the approach set out is robust, providing consumers with key protections; that the approach to information disclosure will enhance consumer understanding of BNPL products; and that it can be delivered swiftly to ensure that there is certainty for all stakeholders.

5.2 The government invites stakeholders to respond to this consultation by 11:59pm on 29 November 2024. Responses should be submitted to BuyNowPayLater@hmtreasury.gov.uk.

5.3 The government will then consider responses and will look to publish its final policy position before bringing forward legislation as soon as parliamentary time allows.

5.4 Following this, the FCA will consult on its detailed rules, with particular focus on the disclosure requirements that should apply to BNPL agreements. It will then publish its final rules and open registration for the TPR. There will then be a period between final rules and 'Regulation Day' for firms to finish preparing for the new rules and to update practices and processes accordingly. Firms will then be subject to full regulation 12 months after the legislation is made.

5.5 As noted in chapter 1, the government is committed to wider reform of the CCA. The government recognises that many of the issues with applying the CCA to BNPL (such as with the suitability of the information disclosure regime) may not be unique to BNPL and could arise for other consumer credit products. A wider reform of the CCA will provide an opportunity to consider consumer credit regulation holistically and to develop a regime that best delivers for consumers. The government will look to bring forward a consultation on more detailed proposals in due course.

Annex A

Summary of responses to the government's previous consultation on BNPL regulation

Introduction

A.1 This annex summarises stakeholder feedback to the government's previous consultation on BNPL regulation, which ran from February to April 2023. It also explains how such feedback has been reflected in the proposals published in this latest consultation.

A.2 The February 2023 consultation sought views on draft legislation and the extent to which it delivered on positions the government had previously set out in the response to its consultation in October 2021.¹¹ The consultation also asked for stakeholders' feedback and insights on the potential impact of regulation on consumers and businesses to help inform its Impact Assessment of this measure. Finally, the consultation asked for stakeholders' views on the impact of regulation on those who share protected characteristics to assist the government in fulfilling its obligations under the Public Sector Equality Duty (PSED) in section 149 of the Equality Act 2010.

A.3 The consultation received 53 responses. These responses were from lenders offering agreements that would become regulated, firms from the wider consumer credit and payment industries, credit reference agencies, merchants, trade associations, consumer groups, debt advice charities, law firms, and an academic. A list of the non-confidential respondents can be found at Annex B. The government would like to thank all respondents for taking the time to respond to the consultation and for sharing their views.

A.4 The sections summarise stakeholder feedback as follows:

- Section 1 sets out consultees' views on scope;
- Section 2 sets out consultees' views on regulatory controls;

¹¹

https://assets.publishing.service.gov.uk/media/62ab50d58fa8f535763df206/BNPL_consultation_response__For_matted_.pdf

- Section 3 sets out consultees' views on the proposed transitional arrangements for regulation; and
- Section 4 sets out stakeholder feedback and insight on the potential impacts of regulation on consumers, businesses and persons who share protected characteristics.

Section 1: Scope

A.5 In the consultation, the government proposed that regulation should be limited to agreements offered by third-party lenders (unless such an agreement fell into a specific exemption that the draft legislation set out). Agreements provided directly by merchants (i.e., the provider of goods and services that the agreement finances) would continue to be exempt from regulation. It asked for feedback on the drafting in the draft SI.

A.6 There were relatively few comments on the draft legislation itself. A small number of respondents thought that the drafting was potentially too complex in places.

A.7 More generally, stakeholders expressed concern that the overarching position on scope led to the risk that large merchants, particularly those operating online, could begin offering unregulated agreements themselves at scale.

A.8 Some BNPL lenders, as well as broader industry stakeholders, thought that there was a risk that large international tech firms or large e-commerce platforms would develop their own unregulated products. There were concerns that this could further enhance the competitive advantage of these firms, given their market position, at the expense of smaller merchants who partner with BNPL firms offering agreements due to become regulated under the proposals. There were also concerns expressed that, should this model develop, consumers could be confused about the different rights and protections they had under apparently similar agreements.

A.9 Consumer groups were generally pragmatic, noting the complexities and risks. Some noted the need for close monitoring of the market, so that if unregulated agreements began to be provided directly by merchants at scale, the government could intervene to prevent any potential consumer detriment from crystallising.

A.10 **Government response:** the government sets out its position on scope in paragraphs 2.2-2.9. The government understands the concerns raised by stakeholders. However, it believes that alternative approaches would risk disrupting low-risk day-to-day transactions or require changes to more fundamental concepts in the consumer credit regulatory regime. It therefore intends to focus regulation on agreements offered by third-party lenders but will continue to monitor

the merchant provided credit market and will act if it sees evidence of growth in the market or significant potential for harm.

Exemptions – insurance, registered social landlords, employer/employee lending

A.11 Based on the position it had set out in its June 2022 consultation response, the government set out that it planned to continue to provide regulatory exemptions for certain arrangements not considered to present a substantive risk of consumer detriment. These included agreements:

- financing contracts of insurance, where there may be a third-party such as a broker involved in the transaction;
- provided by registered social landlords (RSLs) to their tenants to finance the provision of goods and services; and
- to employees where the agreement results from an arrangement between the employer and the lender or supplier of goods and services which the agreement finances.

A.12 The consultation asked for stakeholder views on whether the draft legislation was effective in delivering the policy intent to continue to exempt these types of agreement. It also asked for stakeholder views on whether the proposed exemption for agreements provided by RSLs was appropriate.

A.13 Stakeholders generally supported the proposed exemption for insurance and there were no comments on the specific drafting.

A.14 There was one substantive comment relating to the drafting for the proposed exemption for RSLs, which related to the legal differences in housing tenure in English and Scots law. More broadly, stakeholders were generally supportive of the proposed exemption, but some noted potential risks, such as RSLs offering loans to consolidate rental arrears or unaffordable lending.

A.15 Stakeholders were also generally supportive of the exemption for employer/employee lending, with the limited comments on drafting centring on the clarity of the use of the word ‘arrangement’ here. One respondent also queried whether the exemption should be expanded to encompass entities in the employer’s group, as well as just the employer itself.

A.16 **Government response:** the government intends to maintain these exemptions as part of its revised policy approach to regulation. Reflecting feedback, the government has proposed expanding the exemption for arrangements facilitated by employers so that it now encompasses entities in the employer’s wider group. The exemptions are set out in article 3(3) of the draft legislation. The government would

welcome further comments from stakeholders on the revised drafting of this provision.

Section 2: Regulatory controls and the content of agreements

A.17 The consultation asked for stakeholder feedback on the draft legislation to deliver regulatory controls. The consultation also asked for feedback on whether it was proportionate for the current CCA requirements on the content of agreements to apply to these agreements.

A.18 As with stakeholder responses to the questions on scope, there were relatively few substantive points raised about the proposed drafting of the legislation. Instead, most stakeholders provided views about broader policy issues.

Credit broking

A.19 The previous consultation set out that the government intended to exempt merchants offering newly regulated agreements from third-party lenders as a payment option from credit broking regulation. The consultation asked stakeholders whether the proposed draft legislation achieved this policy objective.

A.20 A small number of stakeholders queried a potential ambiguity in the proposed drafting, which could lead to merchants who broker interest-bearing credit mistakenly believing that they can use the exemption.

A.21 The majority of responses, including from most consumer groups, agreed with the policy position that merchants offering newly regulated BNPL agreements should be exempt from credit broking regulation. Some noted the importance of the application of the financial promotions regime to mitigate potential consumer detriment. Some BNPL lenders also thought that it would be proportionate to extend the exemption to certain running-account agreements.

A.22 A small number of responses, particularly from the wider credit industry, disagreed with the policy approach of exempting these merchants from credit broking regulation. These respondents' concerns centred on the potential competitive advantage for providers of newly regulated agreements compared to other regulated agreements.

A.23 The consultation also sought stakeholders' views on legislation requiring domestic premises suppliers to obtain FCA authorisation to offer newly regulated agreements from third-party lenders as a payment option.

A.24 There was broad agreement with the proposed policy approach to domestic premises suppliers, with a small number of stakeholders commenting on potential ambiguities in the drafting of the legislation.

A.25 Government response: the government believes that the policy approach set out in the previous consultation is proportionate and balances continued access to BNPL products alongside the need for strong protections. It thinks that the drafting achieves this policy intent and has therefore retained this in the revised draft SI through article 3(2).

Advertising and promotions

A.26 The consultation sought stakeholder views on draft legislation requiring merchants to have promotions of third-party lender's newly regulated BNPL agreements approved by an authorised person.

A.27 There were no substantive comments on the legal drafting. Stakeholders generally agreed with the policy approach, although some suggested that there should be thought given to the pre-contractual parts of the customer journey more broadly, particularly how BNPL is presented at online checkouts.

A.28 Some responses from the BNPL industry used this opportunity to highlight concerns relating to financial promotions that may arise ahead of regulation coming into effect. These firms raised questions about the impact of the FCA's financial promotions gateway on BNPL firms that are not authorised by the FCA for other regulated activities. In summary, they suggested that the gateway could distort competition between FCA authorised BNPL firms and unauthorised firms reliant on authorised third-party approvers for their financial promotions and those of their unauthorised partner merchants.

A.29 These firms also suggested that only a small number of authorised firms who might seek a gateway permission would be willing and able to approve promotions from unauthorised BNPL firms. In addition, they set out concerns that, if these third-party approvers did not gain FCA permission, or were to leave the market, the practical effect would be unauthorised BNPL firms being prevented from issuing financial promotions. To address this issue, some respondents suggested that the government should explore ways for currently unauthorised firms to be able to issue their own financial promotions without needing to have them approved by an authorised third-party with gateway permission.

A.30 Government response: the government believes the approach previously set out on financial promotions is appropriate. Article 5 has been retained, with minor amendments, from the previous draft legislation. While the government notes concerns from some firms, it does not believe it is necessary to make changes to the operation of the

financial promotions gateway and believes firms in the TPR will be able to get their financial promotions approved as needed.

Pre-contractual requirements

A.31 The previous consultation proposed disapplying the requirements on the form and content of pre-contractual information in section 55 CCA for newly regulated agreements. Instead, firms would need to comply with relevant FCA rules (on which the FCA would consult).

A.32 There were no substantive comments from stakeholders on the draft legislation. BNPL lenders were supportive of the approach, with one exception where the firm suggested the requirements in section 55 of the CCA would be appropriate. The wider consumer credit industry urged the government to disapply the CCA's pre-contractual requirements for all regulated credit agreements, and to progress this quickly as part of broader CCA reform.

A.33 Some stakeholders called for the sanction of unenforceability to apply to PCCI to provide an incentive to lenders to comply with pre-contractual requirements.

A.34 **Government response:** the government still intends to disapply section 55. As set out in paragraphs 2.14-2.30, it believes that the most effective way to maximise consumer understanding of BNPL agreements is through an information disclosure regime based in the FCA Handbook, rather than the CCA.

Distance Marketing

A.35 The consultation proposed disapplying the Financial Services (Distance Marketing) Regulations 2004 (DMRs) for unauthorised brokers where information is disclosed by authorised lenders in accordance with the FCA's rules on distance marketing for authorised persons. This would have prevented the duplication of information given to consumers.

A.36 There were no substantive comments on the draft legislation. One response queried whether the DMRs should continue to apply as they do today, one asked whether the disapplication is necessary, and another was concerned that unauthorised merchants would be required to monitor information provided by lenders.

A.37 **Government response:** the government continues to believe that the approach to the DMRs previously set out is appropriate. Article 4, which makes the appropriate amendments to the DMRs has been retained. Reflecting concerns that the previous drafting could have led to retailers needing to actively monitor BNPL firms' compliance with FCA rules on distance marketing, the government has made a minor amendment to article 4 to make clear that this is not the case.

Flexibility for firms to comply with CCA pre-contractual requirements

A.38 The consultation noted that some lenders which provide currently unregulated agreements are already authorised and undertake regulated lending. The consultation noted that these firms frequently treat their unregulated lending as though it were regulated to simplify their internal systems and processes. This includes providing pre-contractual information in a CCA-prescribed form.

A.39 The government wanted to ensure that these lenders could continue to provide this information in this way if they chose to do so, so long as the information is presented in a manner that is clear, fair, and not misleading and also complies with the FCA's rules on pre-contractual information. The government considered that no legislative change was needed, but nevertheless asked stakeholders for their views.

A.40 Stakeholders agreed that no legislation was needed and generally agreed with the policy intent.

A.41 **Government response:** as set out in this document, the government's revised approach is to allow the FCA to decide what information requirements should apply to newly regulated BNPL agreements. The government does not intend to have any legislative provision to allow firms to voluntarily comply with the CCA for their newly regulated BNPL products. Instead, it would be for the FCA to determine whether the use of CCA documents would be consistent with its rules.

Small agreements

A.42 BNPL is frequently used for agreements that are below £50. To ensure consistent consumer protection across all BNPL agreements, the consultation proposed disapplying the small agreements provisions in section 17 of the CCA.

A.43 There were no substantive comments on the draft legislation. There was near universal agreement with the policy position, although one BNPL lender thought that the approach may be disproportionate and lead to firms withdrawing lower value BNPL agreements.

A.44 **Government response:** while the government now intends to disapply many of the provisions that are already disappplied for small agreements, it continues to believe that the disapplication of section 17 is necessary to ensure consistency in treatment for agreements above and below £50.

Content of agreements

A.45 The previous consultation set out that the government intended to apply the requirements on the content of agreements set out in the Consumer Credit (Agreements) Regulations 2010 to agreements brought into regulation.

A.46 This aspect of regulatory controls was the most contentious for BNPL firms, who generally expressed strong disagreement with the approach. These firms thought that the CCA requirements on the content and execution of agreements were overly burdensome and would severely impact the BNPL customer journey, while also being of little material benefit for consumers given their length and inaccessibility. These stakeholders generally thought that it was disproportionate to apply these requirements to each individual BNPL transaction, believing a more tailored approach should be adopted for how information about transactions is given to borrowers (either in CCA requirements or FCA rules).

A.47 However, two BNPL lenders generally thought that the proposed approach was proportionate, while there were mixed views from broader industry stakeholders. Some agreed with the application of the Consumer Credit (Agreements) Regulations 2010 but urged that reform should be undertaken as part of the government's broader reform of the CCA. One trade association thought that the Consumer Credit (Agreements) Regulations 2010 did not deliver the right consumer outcomes and that the government should consider immediate amendments for the content of agreements for all regulated credit products.

A.48 Some consumer groups were supportive, welcoming added friction in BNPL transactions and noting that there would be greater consistency in the provision of information to consumers across BNPL offerings. Another consumer group thought that the current requirements were not helpful for consumers and that a more tailored approach should be taken for BNPL instead.

A.49 Government response: as set out in this document, the government believes that the most effective way to maximise consumer understanding of BNPL agreements is through an information disclosure regime based in the FCA Handbook, rather than the CCA. It therefore intends to disapply provisions relating to the form and content of agreements, including the Consumer Credit (Agreements) Regulations 2010.

Section 3: Transitional arrangements

A.50 The consultation asked for stakeholder feedback on the legislation that would enable the establishment of a TPR. The TPR would enable firms that offer newly regulated agreements, and which

are not currently authorised for regulated consumer credit lending, to transfer into the new regulatory regime before seeking full authorisation at a future date. This would enable those firms to continue operating on the day regulation went live ('Regulation Day').

A.51 There were no substantive comments on the legislation. Broadly, stakeholders supported a TPR to enable an orderly transition to regulation. Some stakeholders, particularly consumer groups, were supportive on the basis that a TPR would allow regulation to commence as quickly as possible.

A.52 A small number of responses expressed concern that a customer could receive different treatment depending on whether a BNPL agreement was taken out before or after 'Regulation Day'. A BNPL lender and a trade association also expressed concern that CCA requirements would apply from the first day of regulation while FCA rules would not apply until the end of the TPR, but this was based on a misreading of the legislation and would not in fact have been the case.

A.53 Government response: The government recognises the broad support for the TPR and intends to keep a TPR under the revised approach set out in this document. The legislative provisions which enable the proposed treatment of agreements made post-'Regulation Day' for firms in the TPR are set out in part 4 of the draft legislation.

Section 4: Impact assessment and equalities impact

A.54 The consultation asked for stakeholders' views on what they expected the impacts of the proposed legislation would be on the providers of newly regulated agreements, the consumers that use them, and the merchants that offer them as a payment option. The government sought this information to help inform the impact assessment that would accompany the final legislation.

A.55 There were strong concerns expressed by the majority of BNPL lenders about the potential impacts of the legislation. Broadly, these concerns centred on the proportionality of the proposed approach to regulation, including the extent of the application of the CCA and the treatment of each individual transaction as a distinct credit agreement. These stakeholders noted the following potential impacts:

- Significant costs for lenders to change their systems and processes, as well as potentially the need to undertake an affordability assessment for each individual agreement. Lenders also noted that they would be expected to invest in changes to implement a CCA-based regime, only to have to make further changes in a few years following broader CCA reform (where the government's ambition is to move the majority of the CCA to FCA rules).

- Greater friction in the customer journey leading to customers instead choosing to use other forms of credit, such as interest-bearing credit cards.
- BNPL firms changing their business models to offer a regulated running-account model instead, with the potential that firms begin charging interest.
- Less innovation, or firms leaving the market entirely, leading to fewer credit options for consumers.

A.56 Notably, one BNPL lender took a different view and thought that there would be significant benefits from the legislation, adding also that the costs for firms would not be onerous.

A.57 Consumer groups generally thought that the proposed approach to regulation would result in benefits for consumers, including:

- Better conduct from lenders.
- More friction in the BNPL customer journey, with consumers having more time to consider whether a BNPL agreement would be appropriate for their needs.
- Stronger rights and protections, including access to the FOS.

A.58 One response from a consumer group noted that the continued exemption of agreements provided by merchants may cause confusion for consumers.

A.59 The small number of responses to this question from the wider credit industry noted the positive impacts from increased consumer protection. However, some concerns were raised, including:

- One trade association querying how well consumers would be able to compare newly regulated agreements with other regulated products, given the disapplication of CCA requirements on pre-contractual information.
- A trade association representing retailers noting the potential impact on merchants from regulation, querying whether newly regulated third-party lenders would cease partnering with certain merchants if there were significant volumes of section 75 claims or FOS complaints.

A.60 Government response: the government has considered the feedback it received on the impact of regulation when developing its revised approach. As set out in chapter 4, it would welcome any further evidence and data stakeholders have on the potential impact of its revised approach.

Equalities impact

A.61 When developing a policy proposal, the government is required to comply with the Public Sector Equality Duty (PSED) in section 149 of the Equality Act 2010.

A.62 In the consultation, the government summarised evidence received from its October 2021 consultation on what impacts stakeholders would expect to see on persons sharing any of the protected characteristics. The evidence set out in the consultation related to use of BNPL by those who share protected characteristics linked to disability, race, religion/belief and gender reassignment. The consultation also set out an initial assessment that, on balance, the proposed approach to regulation would mitigate negative impacts on those with protected characteristics whilst maintaining positive impacts. The consultation asked whether stakeholders agreed with this initial assessment and sought further data from stakeholders on any potential impacts on persons sharing any of the protected characteristics.

A.63 The majority of responses agreed that regulating BNPL would have a beneficial impact on those who share protected characteristics (though did not specify which specific protected characteristics). However, a number of responses queried whether regulation could lead to a reduction in access to interest-free credit for more vulnerable cohorts, some of whom potentially share protected characteristics (though particular characteristics were not specified).

A.64 One response, from a provider of agreements that will become regulated, disagreed with the assessment. The respondent believed consumers, including those sharing unspecified protected characteristics, would be negatively impacted by lenders shifting to interest-bearing credit and potentially refusing more applications for credit, as well as merchants raising prices to offset lender costs.

A.65 There was no substantive additional data provided by stakeholders on current users of BNPL who share a protected characteristic, nor any substantive insight on the potential future impact of the proposed legislation on those sharing protected characteristics. One response noted that the consultation did not explore the impact of sex on BNPL lending, citing evidence from Australia which shows that women are disproportionately affected by BNPL debts.

A.66 Since the consultation closed for response, the FCA has released its 2022 Financial Lives Survey. This survey found higher use of BNPL among women compared to men (19% and 14% respectively) and greater than average use among Black and Black British adults (25% compared to a 19% average). This gives further weight to the

assessment in the consultation that use of BNPL is higher among some groups of people sharing particular protected characteristics.

A.67 Government response: the government has considered the feedback to the previous consultation in developing its revised approach. It believes that the new proposal outlined in this document would help to mitigate the risks of potential consumer detriment crystallising for persons with protected characteristics, while also being proportionate and not compromising access to the product.

Annex B

List of respondents to previous consultation on BNPL regulation

Individual respondents are not named

Affirm

Association of British Credit Unions

Association of Professional Compliance Consultants

Bird & Bird

British Retail Consortium

BT

Building Societies Association

Capital One

Centre for Financial Capability

Christians Against Poverty

Citizens Advice Scotland

Clearpay

COADEC

Consumer Council for Northern Ireland

Equifax

Experian

Fair4All Finance

FCA Consumer Panel

Federation of Small Businesses

Finance and Leasing Association

GoHenry

Gymshark

Home Retail Group
HSBC
Humm Group
Infact
Innovate Finance
Klarna
Law 7
Law Society of Scotland
Lloyds Banking Group
Lending Standards Board
Money and Pensions Service
Money Advice Scotland
Money Advice Trust
MoneySavingExpert
Osborne Clarke
Payment Assist
PayPal
Revolut
StepChange
Stripe
Surviving Economic Abuse
The Money Charity
TransUnion
UK Finance
Unify Credit Union
United Kingdom and Ireland Fuel Distribution Association (UKIFDA)
Virgin Money
Which?
Wise

Zilch

Annex C

List of consultation questions

Question 1: Do you have any comments on the proposed approach and/or drafting disapplying provisions on pre-contractual information (sections 55 and 55C)?

Question 2: Do you have any comments on the proposed approach and/or drafting disapplying provisions on the form and content of agreements (sections 60, 61 and 61A)?

Question 3: Do you have any comments on the proposed approach and/or drafting disapplying provisions on ongoing information requirements (sections 77, 77A and 77B)?

Question 4: Do you have any comments on the proposed approach and/or drafting disapplying provisions on varying agreements (section 82)?

Question 5: Do you have any comments on the proposed approach and/or drafting disapplying provisions requiring prescribed information on early repayment (sections 97 and 97A)?

Question 6: Do you have any comments on the proposed approach and/or drafting disapplying provisions relating to arrears, default and termination (sections 76, 86B, 86E, 87, 97 and 103)?

Question 7: Do the amendments to section 129 and section 86 sufficiently retain the effect of these provisions for BNPL agreements?

Question 8: Are stakeholders aware of any further consequential amendments that may arise from the disapplication of CCA information requirements?

Question 9: Do you have any comments on the proposed legislative approach to DMRs, credit broking and the Financial Promotions Order?

Question 10: Do you have comments on the proposed legislation that seeks to implement the TPR?

Question 11: What do you expect the impacts to be of this proposed legislation on: providers of agreements that will be brought into regulation, consumers that use them and merchants that offer them as a payment option?

Question 12: Do you agree with the provisional assessment that, on balance, the government's proposed proportionate approach to reform mitigates the negative impacts on those sharing particular protected characteristics and retain the positive equalities impacts of the products?

Question 13: Do you have any further data you can provide on the potential impacts on persons sharing any of the protected characteristics?

Annex D

Privacy Statement

HM Treasury Consultation: Regulation of Buy-Now, Pay-Later - Processing of Personal Data

This notice sets out how HM Treasury will use your personal data for the purposes of consultation on the regulation of Buy-Now, Pay-Later products and explains your rights under the UK General Data Protection Regulation (GDPR) and the Data Protection Act 2018 (DPA).

Your data (Data Subject Categories)

The personal information relates to you as either a member of the public, parliamentarians, and representatives of organisations or companies.

The data we collect (Data Categories)

Information may include your name, address, email address, job title, and employer of the correspondent, as well as your opinions. It is possible that you will volunteer additional identifying information about themselves or third parties.

Legal basis of processing

The processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in HM Treasury. For the purpose of this consultation the task is consulting on departmental policies or proposals or obtaining opinion data in order to develop good effective government policies.

Purpose

The personal information is processed for the purpose of obtaining the opinions of members of the public and representatives of organisations and companies, about departmental policies, proposals, or generally to obtain public opinion data on an issue of public interest.

Who we share your responses with

As part of our policy development, the Treasury may share full responses including any personal data provided such as your name and email address to this consultation with the Financial Conduct Authority (FCA).

Information provided in response to a consultation may be published or disclosed in accordance with the access to information regimes. These are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 2018 (DPA) and the Environmental Information Regulations 2004 (EIR).

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals with, amongst other things, obligations of confidence.

In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information, we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on HM Treasury.

Where someone submits special category personal data or personal data about third parties, we will endeavour to delete that data before publication takes place.

Where information about respondents is not published, it may be shared with officials within other public bodies involved in this consultation process to assist us in developing the policies to which it relates. Examples of these public bodies appear at: <https://www.gov.uk/government/organisations>

As the personal information is stored on our IT infrastructure, it will be accessible to our IT contractor, NTT. NTT will only process this data for our purposes and in fulfilment with the contractual obligations they have with us.

How long we will hold your data (Retention)

Personal information in responses to consultations will generally be published and therefore retained indefinitely as a historic record under the Public Records Act 1958.

Personal information in responses that is not published will be retained for three calendar years after the consultation has concluded.

Your Rights

- You have the right to request information about how your personal data are processed and to request a copy of that personal data.
- You have the right to request that any inaccuracies in your personal data are rectified without delay.
- You have the right to request that your personal data are erased if there is no longer a justification for them to be processed.
- You have the right, in certain circumstances (for example, where accuracy is contested), to request that the processing of your personal data is restricted.
- You have the right to object to the processing of your personal data where it is processed for direct marketing purposes.
- You have the right to data portability, which allows your data to be copied or transferred from one IT environment to another.

How to submit a Data Subject Access Request (DSAR)

To request access to personal data that HM Treasury holds about you, contact:

HM Treasury Data Protection Unit
G11 Orange
1 Horse Guards Road
London
SW1A 2HQ
dsar@hmtreasury.gov.uk

Complaints

If you have any concerns about the use of your personal data, please contact us via this mailbox: privacy@hmtreasury.gov.uk.

If we are unable to address your concerns to your satisfaction, you can make a complaint to the Information Commissioner, the UK's independent regulator for data protection. The Information Commissioner can be contacted at:

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF
0303 123 1113
casework@ico.org.uk

Any complaint to the Information Commissioner is without prejudice to your right to seek redress through the courts.

HM Treasury contacts

This document can be downloaded from www.gov.uk

If you require this information in an alternative format or have general enquiries about HM Treasury and its work, contact:

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