



HM Treasury

# Regulation of Buy-Now Pay-Later

## **Consultation on draft legislation**

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February 2023



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ISBN: 978-1-915596-58-1 PU: 3279

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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 8 weeks. Responses are invited by 11 April and should be sent to [BuyNowPayLater@hmtreasury.gov.uk](mailto:BuyNowPayLater@hmtreasury.gov.uk). Responses will be shared with the FCA unless otherwise requested.

Further information about responding to this consultation and the way in which personal data will be processed can be found in Chapter 8.

# Chapter 1

## Introduction

1.1 In response to concerns about the potential for consumer detriment which were set out in the Woolard Review and elsewhere, the government announced its intention to bring currently-exempt Buy-Now Pay-Later (BNPL) products into regulation in a proportionate way in February 2021.

1.2 The term '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).

1.3 The legislative exemption in article 60F(2) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (the RAO) exempts from regulation interest-free agreements repayable in under 12 months and in 12 or fewer instalments. In this consultation, the exemption is referred to as the 'A60F(2) exemption' and agreements falling within it are referred to as 'A60F(2) agreements'. BNPL agreements fall into this exemption, but it also captures other types of interest-free lending, including what the government has previously referred to as short-term interest-free credit (STIFC), as well as day-to-day business activities such as invoicing. The government has previously made the following distinction between BNPL and STIFC:

- BNPL - usually taken out online with consumers often having an overarching relationship with a third-party lender, under which multiple low value agreements are made, with little transactional friction as a result.
- STIFC - frequently offered in-store, with consumers taking out a single, higher-value discrete agreement with the credit provider, who may be a third-party lender or the merchant itself. This is a more traditional form of credit, which has operated for many years without raising significant concerns of consumer detriment.

1.4 Following the government's announcement that it intended to regulate BNPL, it published a consultation on a proposed proportionate approach to regulation on 21 October 2021<sup>1</sup>. The consultation set out that proportionality would be achieved by:

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<sup>1</sup> [Regulation of Buy-Now Pay-Later: consultation](#)

- ensuring that the scope of the regulation is defined as closely as possible to target those currently-exempt credit products where there is potential for consumer detriment
- calibrating the regulatory controls that are put in place for agreements that are brought into regulation, so that they are adapted to the business model and focused on those elements of lending practice that are most closely linked to the potential consumer detriment in this market.

1.5 The government subsequently published a response to that consultation<sup>2</sup> on 20 June 2022 which confirmed that, after considering stakeholder feedback, the scope of regulation would capture BNPL as well as STIFC agreements where they are provided by a third-party lender. It also set out that the government was minded to extend the scope of regulation to capture current A60F(2) agreements which are provided directly by merchants online or at a distance. However, the government sought further stakeholder views on the scale and nature of the merchant-provided market, to ensure that the scope of regulation was proportionate.

1.6 The government is grateful for the responses it received to the further questions it asked stakeholders in its consultation response. The government has considered this stakeholder feedback, and this consultation both confirms the government's position on the scope of regulation, and asks for stakeholder feedback on the detail of how that will be achieved through the draft legislation published alongside this consultation.

1.7 In addition to the provisional position on scope, the consultation response also confirmed the government's proposed approach to the regulatory controls that would apply to agreements that are brought into regulation. The government set out that:

- merchants would be exempt from FCA regulation (as credit brokers) where they offer newly regulated agreements as a payment option
- all advertising and promotions of newly regulated agreements would fall within the financial promotions regime
- certain provisions in the CCA would be disapplied in relation to newly regulated agreements, particularly those relating to the provision of detailed pre-contractual information to consumers where FCA rules would apply instead
- the Financial Ombudsman Service (FOS) jurisdiction would be expanded to cover newly regulated agreements.

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<sup>2</sup> [Regulation of Buy-Now Pay-Later: consultation response](#)



1.8 This consultation asks for stakeholder feedback on the approach taken in the draft legislation published alongside this consultation to implement the regulatory controls where specific legislative provision is needed to enact them.

## Consultation structure and next steps

1.9 This consultation has five sections:

- Chapter 2 summarises the feedback received from stakeholders on the additional questions on the scope of regulation that were asked in the government's consultation response and confirms the government's final policy position. This chapter also asks for stakeholders' feedback on the draft legislation which will, subject to Parliamentary passage of the legislation, deliver the government's final policy position on scope, including on regulatory exemptions.
- Chapter 3 asks for feedback on the draft legislation which will, subject to Parliamentary passage, deliver the government's final policy position on the regulatory controls that will apply to newly regulated agreements.
- Chapter 4 sets out the transitional arrangements that will apply to the authorisation of firms and agreements once regulation commences.
- Chapter 5 reaffirms the government's policy positions and expectations on non-legislative regulatory controls, for example giving consumers access to the FOS, and ensuring that newly regulated agreements will be visible on consumers' credit files.
- Chapter 6 sets out the government's preliminary assessment of the Equalities Impacts.

1.10 Since the government announced its intention to regulate BNPL, the FCA has continued to monitor the market and has intervened where it can. The FCA's interventions have included:

- Responding to concerns over financial promotions, resulting in the withdrawal of certain firms' marketing material. On 19 August 2022 it published a 'Dear CEO' letter setting out concerns identified with BNPL financial promotions and reminding firms involved of their obligations when promoting BNPL. This is an area the FCA is proactively monitoring to assess compliance.
- Taking steps to ensure that BNPL lenders treat customers fairly where they have been impacted by the rising cost of living. In June 2022, the FCA issued a letter to BNPL firms setting out its expectations around providing their customers with appropriate care and support, strongly encouraging unauthorised firms to take immediate, positive action. These messages were reinforced at a roundtable with firms on 25 July 2022.

- Using its broader consumer protection powers, which it can apply to unauthorised BNPL firms where poor practice is found. In February 2022, the FCA used these powers to secure changes to potentially unfair and unclear terms in the contracts of four of the biggest BNPL lenders.

1.11 Ahead of regulation, the FCA is continuing to monitor the market and will consider any further interventions under its existing powers where it identifies consumer detriment. The government is reassured that, as regulation approaches, unauthorised lenders have a strong incentive to treat customers fairly and prepare their business models ahead of applying for authorisation.

1.12 Once the government has considered stakeholder feedback to this consultation, it will consider any necessary changes to the draft legislation and intends to publish a consultation response which will set out the anticipated key milestones for regulation. Following that, the government will lay legislation when Parliamentary time allows, with the ambition that this will be during 2023.

## Chapter 2

# Policy position on the scope of regulation and draft legislation

**2.1** In its consultation response, the government set out its intention for the scope of regulation to capture agreements currently exempt under A60F(2) of the RAO where they are provided by a third-party lender. The government also indicated that A60F(2) agreements provided directly by a merchant in person, without the presence of a third-party lender in the transaction, would remain exempt, but that it was minded to extend the scope of regulation to capture agreements which are provided directly by merchants online or at a distance.

**2.2** The government's view is that the greater friction that is present during in-person transactions reduces the risk that consumers accumulate debt across multiple agreements, and consumers are less likely to make impromptu purchases using credit that they otherwise would not have made. The government therefore does not think regulating such agreements would be proportionate. The government's view had been that it may be proportionate to regulate agreements provided by merchants online or at a distance, as the government considered that such agreements had the potential to present the same risks as BNPL and STIFC agreements provided by a third-party lender.

**2.3** However, the government lacked sufficient understanding of the merchant-provided credit market. Therefore, to ensure that regulation was proportionate and did not restrict access to useful financial products or impose disproportionate burdens on small businesses, the government asked for additional insight from stakeholders on its scale and operation before making a final decision.

**2.4** The government received 19 responses and undertook further stakeholder engagement in parallel.

## Stakeholder views on the operation of the merchant-provided credit market

2.5 A number of stakeholders pointed towards potential use of the A60F(2) exemption by merchants. These included:

- Professional services providers using the exemption to provide clients with the option to pay fees monthly
- Independent schools using the exemption to allow the payment of school fees monthly
- Domestic heating oil suppliers offering A60F(2) agreements to consumers to help smooth the purchase of substantial quantities of heating oil over a longer period of time
- Merchants using the exemption to provide consumers with a way to pay for access to a service or subscription, where the provision of the service ceases if a consumer ceases repayments on the credit agreement (for example medical or dental plans, gym memberships or season tickets)
- A telecommunications company enabling customers to purchase accessories and consumer electronics in instalments via their telecoms bill
- A home improvement company using the exemption to finance customer contributions to the government-backed ECO scheme.

2.6 Some of these consultation responses pointed out that these types of arrangement are frequently entered into when the consumer and the merchant are not physically present simultaneously, and therefore would likely be captured under the approach the government was considering (which would regulate agreements offered by merchants online or at a distance).

## Stakeholder views on the scale of the merchant-provided credit market

2.7 There was little substantive data from stakeholders on the current extent of the merchant-provided credit market. However, from the examples given by stakeholders, the government's assessment is that there is a significant volume of arrangements that are provided directly by merchants with parts of, or all, the transaction taking place online or at a distance, that may fall within the A60F(2) exemption. For example, use of the exemption to pay school fees in instalments could mean that around 2,500 independent schools with around 600,000 students offer A60F(2) agreements, whilst over half of domestic heating oil suppliers which serve around 1.7m residential homes could offer payment plans relying on A60F(2). The government's view is that there are likely many other specific merchant-offered arrangements which were not specifically identified by stakeholders, and which potentially fall within the A60F(2) exemption.

## The government's final policy position on the scope of regulation

2.8 Having carefully considered the responses, **the government's view is that the scope of regulation should be limited to agreements that are offered by third-party lenders.**

2.9 Evidence from stakeholders indicated that it would be disproportionate for regulation to apply to all agreements provided by merchants online or at a distance, as it would potentially capture the types of arrangement where there is little, if any, evidence of there being a substantive risk of consumer detriment. A potentially large number of small, independent merchants, whose main business is the sale or supply of goods and services, and not financial services, could also be captured. The government considers that the burden of regulation for these firms could be disproportionate and possibly lead to them stopping offering useful, low-risk agreements to consumers as a result of needing to become authorised. Notably, only one consultation response definitively agreed with the government's proposed approach of expanding the scope of regulation to capture merchant-offered credit provided online or at a distance.

2.10 The government is also conscious of the importance to have a framework of regulation that is as clear as possible to the consumer in determining what protections apply to different agreements. Creating a distinction between in-person transactions and those taken out online or at a distance risks creating a degree of confusion for consumers.

2.11 In addition, the government's view is that the potential risks of consumer detriment that have arisen from the use of the A60F(2) exemption have only emerged since the emergence of the BNPL business model where a third-party lender is involved which takes on credit risk and provides a frictionless means of accessing credit across multiple merchants. Other traditional uses of the exemption, predominantly agreements provided by merchants and which have occurred in one form or another for decades, had not given rise to concern about consumer detriment prior to the emergence of BNPL. This view was shared by stakeholders when the exemption was expanded from four payments to 12 payments in 2015.

2.12 **Therefore, the government has concluded that the scope of regulation should cover current A60F(2) agreements where they are provided by a third-party lender (unless they fall within a specific exemption set out in paragraphs 2.28-2.40).** This approach will be achieved by article 3(3) of the draft legislation. Subject to parliamentary processes, this article will substitute a new paragraph 2(e) and insert new paragraphs (7A) and (7B) in A60F of the RAO. New paragraph (7A)(a) sets out that the A60F(2) exemption does not apply where the lender and the supplier are not the same person, and where the new paragraph (7B) does not apply.

2.13 The effect of this approach is that agreements will become regulated where they are borrower-lender-supplier agreements for

fixed-sum credit to individuals or relevant recipients of credit<sup>3</sup> which are:

- interest-free, repayable in 12 or fewer instalments within 12 months or less;
- where the credit is provided by a person that is not the provider of goods or services which the credit agreement finances (i.e. third-party lenders); and
- not exempt as a result of falling within one of the exemptions set out in paragraphs 2.28-2.40.

**2.14** As a result, third-party lenders offering these agreements will need to be authorised and regulated by the FCA and will need to comply with the regulatory controls that will apply under the government's tailored regime.

**2.15** The government recognises that this is an innovative market with the potential to develop quickly. The government will therefore monitor the market closely to ensure that any future developments in products or business models which present a risk of consumer detriment are identified. If necessary, the government will consider further interventions to ensure that any potential consumer detriment in the future does not crystallise.

**Question 1: do you have any comments on the proposed approach and/or drafting to bring agreements into regulation that are provided by a third-party lender in article 3(3) of the draft legislation?**

## A60F(3) lending

**2.16** In addition to the A60F(2) exemption, which relates to fixed-sum credit, article 60F(3) of the RAO (the A60F(3) exemption) provides an exemption from regulation for certain types of interest-free running account credit. This exemption is currently predominantly used in relation to charge cards. In the June 2022 consultation response, the government set out its concerns about the potential for BNPL providers to adopt a running-account model and utilise the A60F(3) exemption in order to circumvent regulation, while still offering products that present the same risks of potential consumer detriment as BNPL. The government therefore said that it would consider whether a legislative

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<sup>3</sup> The regulated activity of entering into a regulated credit agreement covers agreements to both individuals and "relevant recipients of credit", which includes some small businesses. A relevant recipient of credit includes:

(a) a partnership consisting of two or three persons not all of whom are bodies corporate, or

(b) an unincorporated body of persons which does not consist entirely of bodies corporate and is not a partnership.

The government's position on business-to-business A60F(2) lending is set out in paragraphs 2.20-2.23.

change was needed to A60F(3) to prevent the possibility that it is used as a regulatory loophole.

**2.17** In its consultation response, the government noted that some stakeholders questioned how useful the A60F(3) exemption would be to BNPL lenders as an alternative to A60F(2). In particular given that the A60F(3) exemption requires the full outstanding balance to be cleared in a single repayment, lenders would be extremely limited in how much flexibility they could apply to borrowers' repayments made in relation to individual transactions under the agreement.

**2.18** The government is aware that some lenders currently offer products that appear to have some of the features of running-account agreements, but which in fact consist of numerous fixed-sum agreements taken out under an arrangement where a lender gives a consumer a credit limit which sets the maximum overall balances that can be outstanding at any one time. However, despite the existence of such a credit limit, these agreements appear to be a series of A60F(2) fixed-sum agreements.

**2.19** Having considered this issue further, the government's view is that lenders would not be able to replicate the effect of A60F(2) lending under the A60F(3) exemption for the reason set out above. As a result, the government will not make amendments to A60F(3), and these agreements will remain unregulated.

## Business-to-business A60F(2) lending

**2.20** Most lending to businesses is unregulated. However, a consumer for the purposes of the consumer credit regulatory regime includes individuals and 'relevant recipients of credit' (which includes sole traders, unincorporated associations and partnerships of fewer than four people). Where a business falls within this definition of consumer and the lending is for less than £25,000, the lending is regulated (unless an exemption applies). The rationale behind the current business lending perimeter is that smaller businesses are likely to be less sophisticated than larger ones and they should therefore be provided with the same protections as individual consumers.

**2.21** The government therefore intends that the approach for current A60F(2) agreements that will be brought into regulation and as set out in this consultation will be no different where such lending is for business purposes.

**2.22** Current A60F(2) agreements that will be brought into regulation made to individuals and relevant recipients of credit will not be regulated where they are more than £25,000 and wholly or predominantly for business purposes, as they will fall in the existing business lending exemption in A60C(3) of the RAO.

**2.23** As set out in the previous consultation, the government considers that it would be disproportionate to regulate trade credit, where suppliers provide flexibility to small businesses to defer payment

for goods until they are paid by their customers. Given that these arrangements are typically provided directly by the supplier without the presence of a third-party lender, these will remain exempt under the government's broader approach to scope.

## Anti-avoidance

**2.24** In its consultation response, the government set out that it was concerned about third-party BNPL lenders avoiding 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. Therefore, the government set out that it would consider including anti-avoidance measures in the final legislation to mitigate this risk, if it decided that merchants providing BNPL directly should remain exempt under A60F(2).

**2.25** Given the government's decision for the scope of regulation to capture current A60F(2) agreements that are offered by a third-party lender, the draft legislation provides an anti-avoidance mechanism in the new paragraph 7A(b) in A60F. This mechanism will capture agreements that are provided by a third-party lender to finance purchases from a merchant, but where the merchant has an arrangement with the third-party lender under which the merchant agrees to sell the goods to the lender at the point when the agreement is taken out.

**2.26** The government is aware that some BNPL lenders operate this business model. It is unlikely that a consumer will be aware of the transaction between the merchant and the lender at the point of entering into the credit agreement. Without this mechanism, this business model would remain unregulated and there is a high risk that consumers may mistakenly believe that they are using a regulated product.

**Question 2: do you have any comments on the proposed approach taken to bringing agreements into regulation where a lender purchases goods or services from the original supplier in the way set out in new draft paragraph 7A(b) in A60F?**

**Question 3: do you consider that there may be unintended consequences of the government's proposed drafting of the proposed legislation to capture these agreements?**

**2.27** In its consultation response the government set out the ways in which stakeholders considered the market could develop in the future. The government recognises that the government's final approach to scope might not capture all the ways in which the BNPL market could develop. However, as set out in paragraph 2.15, the government will closely monitor the market to identify whether any new products



emerge that could present a risk of widespread consumer detriment, and will take action if necessary.

## Regulatory exemptions

**2.28** The government confirmed in its consultation response that it would continue to provide regulatory exemptions for certain arrangements that it did not consider presented a substantive risk of consumer detriment. As set out elsewhere in this document, this consultation seeks feedback on the draft legislation which will maintain these exemptions. The rationale for continuing to provide these exemptions was set out in the government's consultation response.

**2.29** For some of these activities, where a third-party lender is not involved in the transaction, an express provision in legislation is not needed given that these arrangements will remain exempt under A60F(2) of the RAO. Examples of these arrangements are:

- Invoicing, where deferred payment is offered directly by a provider of goods or services to a consumer where it is interest-free and repayable in a single instalment, or where a deposit is paid and the balance of the cost due is repayable in a single instalment.
- Trade credit, where suppliers provide flexibility to small businesses to defer payment for goods or services until the small business is paid by their customers.

**2.30** However, there are other arrangements where a third-party lender is present in the transaction, and where an express legislative provision is therefore needed to ensure that they will remain exempt, in accordance with the government's proportionate approach to regulation. These proposed arrangements are set out below.

## Agreements financing contracts of insurance

**2.31** One of the key policy objectives behind the expansion of the A60F(2) exemption in 2015 was to allow insurers to offer payment for annual insurance policies in monthly instalments, making it easier and more affordable for consumers to pay for their insurance.

**2.32** The majority of agreements to finance premiums under contracts of insurance will be provided by the issuer of the insurance contract. These agreements will continue to be exempt under the government's general approach to scope. However, there are other scenarios where a third-party, such as a broker, may be involved in the transaction, and where the third-party may provide the facility to enable monthly instalments. Without express legislative provision, these agreements would otherwise be regulated under the government's approach to the treatment of third-party lenders and

there would be a risk that access to insurance would be restricted, particularly for lower-income consumers.

**2.33** The government has therefore included an express legislative provision in the new draft paragraph 7B(a) in A60F of the RAO, which will continue to exclude interest-free borrower-lender-supplier credit agreements, repayable in under 12 months and in 12 or fewer instalments which finance premiums for contracts of insurance where they are provided by a third party which is not the provider of the insurance contract.

**Question 4: do you have any comments on the proposed legislative approach and/or the drafting which seeks to ensure that agreements made by third-party lenders that finance premiums under contracts of insurance will continue to be exempt under A60F(2)?**

### Agreements offered by registered social landlords to tenants and leaseholders

**2.34** The government is aware that some registered social landlords such as housing associations offer agreements to their tenants and leaseholders which currently fall within A60F(2). These can be used to finance repairs to buildings, or to provide support to tenants for the purchase of white goods.

**2.35** The government's view is that registered social landlords provide a role in supporting their tenants and leaseholders, who are disproportionately more likely to be low-income consumers who may struggle to access credit elsewhere. In addition, the ongoing relationship between the registered social landlord and their tenants and leaseholders leads to a stronger understanding of consumers' financial situations. For that reason, the government has provided certain regulatory exemptions for registered social landlords. Most recently, the government provided for an exemption from credit broking regulation for registered social landlords where they refer their tenants to social and community lenders.

**2.36** The government has therefore included a proposed legislative provision in the new draft paragraph (7B)(c) in A60F of the RAO which excludes from regulation interest-free borrower-lender-supplier credit agreements repayable in under 12 months in 12 or fewer instalments provided by registered social landlords to their tenants to finance the provision of goods and services. This will ensure that registered social landlords, who would otherwise be captured in regulation by virtue of being a third-party lender, will continue to be exempt from regulation.

**2.37** However, the government wants to ensure that this exemption is appropriate and does not lead to potential consumer detriment. The government is therefore keen to hear stakeholder views on whether this proposed exemption is appropriate.

**Question 5: do you think it is appropriate for there to be an exemption for interest-free borrower-lender-supplier credit agreements repayable in under 12 months in 12 or fewer instalments, where they are provided by registered social landlords to their tenants to finance the provision of goods and services?**

**Question 6: do you have any comments on the proposed drafting which seeks to ensure that agreements that are offered by registered social landlords to their tenants and leaseholders, and where there is a third-party lender involved, will continue to be exempt under A60F(2)?**

### Employer/employee lending

2.38 The government understands that employers will commonly offer certain interest-free credit agreements to their employees as part of employee benefits and assistance schemes. These agreements are most commonly used to finance season tickets or tenancy deposits, with repayments deducted monthly from employees' salaries.

2.39 The government understands that there are broadly two models used for such arrangements which would be captured in regulation under the approach to scope:

- The employer acts as the lender, with the agreement financing goods or services that are offered by a third-party (for example a train company offering season tickets), or
- The employer introduces the employee to a specialist company which offers wider employee benefits (and which has a continuing contractual agreement with the employer). The specialist company then provides the credit which finances the purchase of goods or services from a third-party.

2.40 The government's view is that these agreements should remain exempt, as they allow employees, particularly lower-income employees, to access more affordable credit options. For example, employees will likely pay less on travel by paying for a season ticket in full, financed by an interest-free monthly instalment loan, than by paying for daily tickets. The government has therefore proposed a specific provision in the new draft paragraph (7B)(b) in A60F of the RAO, which allows credit agreements where the borrowers are employees and which result from an arrangement between their employer and the lender or supplier to continue to use the A60F(2) exemption.

**Question 7: do you have any comments on the proposed drafting which seeks to ensure that agreements (i) where the borrowers are employees and, (ii) which result from an arrangement between their employer and the lender or supplier, will continue to be exempt under A60F(2)?**

# Chapter 3

## Regulatory controls that will apply to newly regulated agreements

3.1 As set out in the October 2021 consultation and the consultation response, the government considers that A60F(2) agreements are lower risk than other types of credit. As a result, the government's view is that the regulatory controls that should be applied to those A60F(2) agreements that will be brought into regulation should be proportionate to the risks that they present, whilst also providing sufficient consumer protection. The tailored approach to the regulatory controls that the government intends to apply to newly regulated agreements was confirmed in the consultation response. This chapter sets out how the proposed approach will be implemented through the draft legislation and asks for stakeholders' feedback on that draft legislation.

3.2 The government noted in the consultation response that many stakeholders raised questions about broader reform of the consumer credit regulatory regime. Recognising that the current regulatory framework for consumer credit is built around a dated model of regulation established by the CCA, the government has committed to CCA reform and published a consultation on this subject on 9 December 2022<sup>4</sup>.

### Credit broking

3.3 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).

3.4 The government considers that bringing merchants which offer newly regulated agreements as a payment option into the scope of credit broking regulation would be disproportionate. The government has concerns that regulating these merchants would impose significant costs on retailers and possibly lead them to cease offering

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<sup>4</sup> [Reform of the Consumer Credit Act: consultation](#)

interest-free credit options. The government has also set out that other protections will be in place to mitigate risks of consumer detriment from merchants not being regulated, such as applying the financial promotions regime to unauthorised merchants that offer newly regulated agreements as a payment option (as explained in paragraph 3.8-3.15).

**3.5** As such, the government's consultation response confirmed that merchants which introduce their customers to the agreements which will now be brought into regulation will be exempt from credit broking regulation. The proposed article 3(2) of the draft legislation inserts a new article 36FB in the RAO to implement this.

**Question 8: do you have any comments on the proposed legislative approach and/or drafting taken to exempting merchants from credit broking regulation?**

### Domestic premises suppliers

**3.6** Notwithstanding the general approach to credit broking, in the June 2022 consultation response, the government confirmed its intention to require domestic premises suppliers to obtain FCA authorisation if they wish to offer newly regulated agreements from a third-party lender as a payment option. Domestic premises suppliers that carry on credit broking activities will be subject to the FCA's full permission regime. A domestic premises supplier is one who sells goods, offers or agrees to sell goods, or offers or contracts to supply services, to individuals while the supplier or the supplier's representative is physically present in the customer's home.

**3.7** This approach is in line with the current regulatory treatment of domestic premises suppliers, and reflects the higher-risk of pressure selling that is present for vulnerable consumers where sales may routinely take place in their home. This is achieved in the proposed new article 36FB of the RAO, which would be inserted by article 3(2) of the draft legislation.

**Question 9: do you have any comments on the proposed legislative approach and/or drafting to regulate merchants as credit brokers when they are a domestic premises supplier?**

### Advertising and promotions

**3.8** There are existing requirements for lenders and merchants who advertise A60F(2) agreements, such as those set out by the UK Advertising Codes and monitored by the Advertising Standards Authority (ASA) and the Committee of Advertising Practice (CAP). In addition, the financial promotions regime currently already applies to some scenarios where A60F(2) agreements are offered and the FCA has been able to use this to take some action to improve standards in the BNPL market, for example by setting out concerns identified with BNPL

financial promotions and reminding firms involved of their obligations when doing so.

**3.9** However, recognising the concerns that have been expressed by stakeholders about the way in which BNPL products are currently advertised, the government set out in its consultation response that, as part of regulating the sector, it would apply the financial promotions regime to unauthorised merchants offering BNPL as a payment option. Whilst the financial promotions regime currently already applies to some scenarios in which A60F(2) agreements are offered, a legislative change is needed to ensure that when regulation commences and lenders become authorised persons, unauthorised merchants will still need to have financial promotions approved by an authorised person.

**3.10** Section 21 of the Financial Services and Markets Act 2000 (FSMA) introduced a restriction on financial promotion. The restriction is that a person ("A") must not, in the course of business, communicate an invitation or inducement to engage in investment activity (section 21(1)). However, section 21(2) states that the restriction does not apply if:

- A is an authorised person, or
- the content of the communication is approved by an authorised person.

**3.11** In addition, article 15(1) of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 (the Financial Promotions Order) sets out that, if the requirements of article 15(2) are met, the restriction on financial promotion does not apply to any communication which is made with a view to or for the purposes of introducing the recipient to:

- An authorised person who carries on the controlled activity to which the communication relates, or
- An exempt person where the communication relates to a controlled activity which is also a regulated activity in relation to which he is an exempt person.

**3.12** The requirements of article 15(2) which must be met are that:

- The maker of the communication ("A") is not a close relative of, nor a member of the same group as, the person to whom the introduction is, or is to be, made,
- A does not receive from any person other than the recipient any pecuniary reward or other advantage arising out of his making the introduction, and
- It is clear in all the circumstances that the recipient, in his capacity as investor, is not seeking and has not sought advice from A as to the merits of the recipient engaging in investment activity (or, if the client has sought such advice, A has declined to give it, but has recommended that the recipient seek such advice from an authorised person).

3.13 The practical effect of this is that financial promotions relating to A60F(2) agreements are currently subject to the section 21 restriction unless they are made by:

- a lender which is FCA authorised
- an unauthorised lender or merchant but where the content of the promotion is approved by an authorised person
- a merchant that is authorised for credit broking or another regulated activity
- a merchant which offers a communication which is made to or for the purposes of introducing a consumer to a lender which is also authorised for undertaking regulated lending.

3.14 Without an amendment to the financial promotions regime, the restriction on financial promotion would not apply to an unauthorised merchant that offers a third-party lender's newly regulated agreements as a method of payment. This is because, once those agreements are regulated, the lender will be authorised and therefore the unauthorised merchant would be able to rely on article 15(1) of the Financial Promotions Order. The effect of this would be that such promotions would not need to be approved by an authorised person.

3.15 To mitigate the risk of potential consumer detriment from promotions made by unauthorised merchants, the government intends that those merchants will be required to obtain approval for promotion of agreements which will be brought into regulation from an authorised person (which could, but does not have to, be their lender partner). In practice, the government anticipates that merchants will not have all their financial promotions individually approved by an authorised person. Instead, the government's view is that third-party lender partners will provide pre-approved materials to merchants as part of the overarching commercial arrangements between the lender and merchant. The proposed article 5 of the draft legislation seeks to achieve this, by amending the Financial Promotions Order.<sup>5</sup>

**Question 10: do you have any comments on the proposed legislative approach and/or drafting which seeks to ensure that unauthorised merchants will be required to have their promotions approved by an authorised person?**

## Pre-contractual requirements

3.16 The consultation response confirmed the government's intention to disapply the CCA's pre-contractual provisions for agreements that will be brought into regulation. The government's view is that an FCA rules-based regime for pre-contractual disclosure would be more

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<sup>5</sup> The government notes the FCA's recent consultation on rules for the financial promotions gateway, which will ensure that authorised firms that wish to approve financial promotions must pass through a regulatory gateway operated by the FCA.

proportionate given the level of risk associated with these agreements. The government also considers that a more flexible FCA rules-based regime for pre-contractual disclosure is better suited to the way in which these products are used, rather than the prescriptive and inflexible approach required by the CCA. The government considers, and many consultation responses agreed, that - subject to the conclusions of the FCA's consultation - FCA rules for pre-contractual requirements could align with its current requirements on adequate explanations set out in CONC4.2 in the FCA consumer credit sourcebook.

**3.17** Proposed article 2(3) of the draft legislation disapplies section 55 of the CCA for agreements which will be brought into regulation. The practical effect of this is that firms offering newly regulated agreements will not need to comply with the requirements of the Consumer Credit (Disclosure of Information) Regulations 2010 which are made under section 55. Instead, firms will be required to comply with FCA rules on pre-contractual disclosure of information. The FCA will consult on its proposed rules.

**3.18** Given the disapplication of the CCA requirement for firms to provide pre-contractual information in the prescribed form, the corresponding sanction of unenforceability without a court order in section 55(2) of the CCA will not be applicable. If firms fail to comply with the FCA's rules on pre-contractual information then the FCA can take action under its existing toolkit. Alternatively, a consumer will be able to complain to the firm, make a complaint about the firm to the FOS, or make a claim for damages under section 138D FSMA if they have suffered loss as a result of the breach of the FCA rules.

**Question 11: do you have any comments on the proposed legislative approach and/or drafting which seeks to disapply the CCA requirements on pre-contractual information for agreements that are brought into regulation?**

## The Financial Services (Distance Marketing) Regulations 2004

**3.19** 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) and contain requirements that suppliers (for example lenders) and intermediaries (for example credit brokers) must comply with.

**3.20** However, some elements of the DMRs do not apply in relation to contracts made by a firm who is an authorised person, where those contracts constitute or are part of a regulated activity carried on by that firm. 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).

3.21 Under the government's 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 an authorised person. The effect of this would be that unauthorised brokers 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 of information and burdens for the unauthorised intermediaries.

3.22 The government has therefore included a provision in article 4 of the draft legislation which will 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.

**Question 12: do you have any comments on the proposed legislative approach and/or drafting to disapply the DMRs for unauthorised intermediaries where information is disclosed by lenders in accordance with the FCA's rules on distance marketing for authorised persons?**

### Flexibility for firms to comply with CCA pre-contractual requirements

3.23 The government is aware that some mainstream lenders that offer currently-exempt A60F(2) agreements, particularly for higher-value, longer-term loans (for example over six months), do so alongside other credit agreements which are already regulated. The government's understanding is that these mainstream lenders are currently likely to treat their current A60F(2) lending as though it were regulated, in order to simplify internal systems and processes.

3.24 In its consultation response, the government committed to ensuring that the transition to a rules-based pre-contractual disclosure regime would not impose unnecessary burdens on these firms. As a result, the government stated that it would consider how to ensure that agreements will be compliant should a lender choose to apply the existing CCA requirements for currently-regulated agreements to the A60F(2) agreements which will be brought into regulation.

3.25 The government considers that no legislative provision is needed to achieve this. Firms which currently provide information on A60F(2) agreements in accordance with the Consumer Credit (Disclosure of Information) Regulations 2010 could, if they wish, provide information in a comparable format, 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.

**Question 13: do you consider that this proposed approach will give firms sufficient flexibility to provide information in accordance with CCA pre-contractual requirements rather than the tailored regime for agreements that will be brought into regulation?**

### Small agreements

**3.26** Given that BNPL is frequently used for agreements below £50, the government set out that it would disapply the small agreements provisions in section 17 of the CCA for newly regulated agreements. This will mean that the full suite of CCA requirements would apply to BNPL agreements which do not exceed £50, thus ensuring consistent consumer protection across all BNPL agreements.

**3.27** 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. This would have the effect that provisions of the CCA which do not apply to small agreements would apply to newly regulated agreements of any value once they are regulated.

**Question 14: do you have any comments on the proposed legislation which seeks to disapply the small agreements provisions for agreements that will be brought into regulation?**

# Chapter 4

## Transition to FCA regulation

4.1 In its consultation response, the government set out that it would further consider the transitional regime for bringing agreements into regulation. As it has considered the approach, the government has been careful to balance the potential burdens on firms in familiarising themselves with the new regulatory regime, and the desire for regulation to commence as soon as possible to minimise the risks of potential consumer detriment crystallising.

4.2 Throughout the course of developing the regulatory regime for agreements that will be brought into regulation, the government has been working closely with the FCA. As a result, it is the intention of the government and the FCA that, shortly following the publication of the government's response to this consultation with final draft legislation, the FCA will publish a consultation on its proposed rules for firms which provide agreements that the legislation will bring into regulation.

4.3 In order to allow sufficient time for the FCA to consult on and put in place the relevant architecture for the new regulatory regime, and for firms to take the necessary steps to meet the requirements of the amended regulatory framework, the government intends to put in place a transition period from the point at which, subject to Parliamentary approval, the amending legislation is made. During this period, firms will be able to familiarise themselves with the new regime once the FCA has finalised its rules, and to make the necessary changes to their business models ahead of 'regulation day' (the day on which regulation commences).

4.4 The following chapter sets out the government's proposed creation of a temporary permissions regime (TPR) which has been designed to enable firms to transfer into the new regulatory regime before seeking full authorisation at a future date. This chapter also sets out in broad terms how the TPR is intended to work. The FCA's consultation on its proposed rules will provide more detail on how the TPR will work in practice. Finally, the chapter also sets out the treatment of pre-existing currently-unregulated agreements once regulation comes into effect.

## Temporary permissions regime

4.5 The government notes the breadth of stakeholder support for BNPL to be brought into regulation as soon as possible. To achieve this, the government proposes to put in place a TPR.

4.6 A TPR will allow firms to continue to operate until they are fully authorised. Without a TPR, an unauthorised firm would have to suspend operations until it had completed the FCA's authorisation process. The intention is that firms in the TPR will be deemed authorised under part 4A of FSMA by the FCA. As a result, they will be permitted to undertake the relevant regulated activities relating to newly regulated agreements, and will need to comply with the relevant FCA rules. In addition, the FCA will also be able to supervise these firms and take enforcement action against them if necessary. The relevant regulated activities will be:

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

### Eligibility for the TPR

4.7 It is intended that firms which are not currently authorised and who wish to undertake the regulated activities relating to agreements which will be brought into regulation set out in paragraph 4.6 on or after regulation day, will need to register with the FCA for entry into the TPR before regulation day.

4.8 Firms will only enter the TPR where they have:

- engaged in an activity (which will become a regulated activity on regulation day) prior to regulation day;
- registered for the TPR prior to regulation day; and
- paid a non-refundable registration fee.

4.9 It is intended that the following categories of firm will need to enter the TPR should they wish to undertake newly regulated activity on or after regulation day:

- a. Third-party lenders offering currently-exempt agreements, who do not currently have the appropriate FCA authorisation for lending;
- b. Any third-party lender which has an arrangement with a merchant under which the merchant agrees to sell the goods to the lender at the point when the newly regulated agreement is taken out, where that lender does not have a permission for regulated consumer credit lending (covering the business model set out in paragraphs 2.24-2.26);

- c. Domestic premises suppliers that currently only broker currently-exempt agreements and who therefore do not already have a full credit broking permission.

4.10 Third-party lenders who are already authorised for entering into a regulated credit agreement as lender, and domestic premises suppliers who are authorised for credit broking, will not need to register for the TPR as they will be able to rely on their existing permissions.

### Sequencing of the TPR

4.11 Once final draft legislation has been published alongside the government's consultation response, prior to it being laid before Parliament, the FCA currently plans to publish a consultation on its proposed conduct rules, as well as rules for firms operating on a temporary permission.

4.12 After considering responses, the FCA will make rules for the TPR. It is likely that, at this point, firms will be invited to register for the TPR. The government anticipates that firms will be required to provide the FCA with a certain amount of information upon registration, and that firms will have to pay a non-refundable fee.

4.13 The FCA is likely to set out the proposed window in which a firm can register for the TPR in its consultation. This window will close on regulation day. Any firm that has not registered for the TPR prior to regulation day, and which does not have the appropriate authorisation, will not be able to undertake the regulated activity on or after regulation day. However, firms would be able to continue to service agreements that existed prior to regulation day (which will remain unregulated, as set out in paragraph 4.22 below). Firms that have registered for the TPR but who subsequently decide that they do not wish to undertake new business after regulation day will be able to withdraw from the TPR. If a firm decides to withdraw from the TPR, its fee will not be refunded.

4.14 The TPR will commence on regulation day. Firms will be able to apply for authorisation, and will likely be given landing slots in which they will be asked to submit their application. During the TPR, firms will be deemed to have a Part 4A permission to carry out the relevant activity, and therefore able to continue to enter into agreements and/or broker agreements under their temporary permission until their authorisation application is either approved, refused, withdrawn or if they fail to apply within their designated landing slot. Paragraphs 4.16-4.21 provide more detail on how agreements taken out post-regulation day will be treated if an application is refused or withdrawn.

4.15 The proposed legislative provisions which put in place the architecture for the TPR are set out in Part 4 of the draft legislation.

**Question 15: do you have any comments on the proposed legislation that seeks to implement the TPR?**

## Treatment of agreements made post-regulation day by firms that leave the TPR

4.16 New agreements that are entered into or brokered by firms in the TPR will be regulated credit agreements given that they will be made after regulation day. Firms that exit the TPR, either because their application for full permission is refused or withdrawn or they withdraw voluntarily, will be prohibited from entering into new agreements (or brokering new agreements in the case of domestic premises suppliers) as they will no longer be deemed authorised.

4.17 However, lenders that enter the TPR but subsequently leave it without full permission will likely have entered into regulated agreements during the TPR. Without being deemed authorised, firms would be unable to legally service these agreements and would have to sell them to an authorised third-party.

4.18 The government considers that this approach would be highly burdensome for firms, as they would have to immediately sell their books of newly regulated agreements once their temporary permission ceases.

4.19 Therefore, lenders that would otherwise exit the TPR will be able to retain 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. Those lenders will continue to be deemed authorised for servicing those regulated agreements which were entered into in whilst those lenders had a temporary permission for lending. The FCA will continue to supervise, and will be able to take enforcement action against, any firms which retain a temporary permission for exercising, or having the right to exercise, the lender's rights and duties under a regulated credit agreement. Alternatively, firms will be able to dispose of their loan books to an authorised third-party should they wish.

4.20 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 of two years. This will ensure that lenders will continue to service any agreements that have balances beyond the normal contractual term, for example where payment arrangements are in place.

4.21 The legislative provisions which enable the proposed treatment of agreements made post-regulation day for firms in the TPR are set out at article 9 in the draft legislation.

## Treatment of agreements that existed prior to regulation

4.22 Post-regulation day there will continue to exist unregulated exempt agreements that were taken out prior to regulation day. In line

with the general approach to regulatory interventions, it is intended that these exempt agreements will continue to be exempt. The introductory wording of new paragraph (7A) which would be inserted in the RAO by article 3(3)(b) of the draft legislation makes clear that only agreements made on or after regulation day will be regulated.

# Chapter 5

## Regulatory controls not included in draft legislation

5.1 In addition to the provisions in the draft legislation, existing elements of the consumer credit regulatory regime will apply to newly regulated agreements. Some of these are contained in the CCA framework, and will automatically apply to newly regulated agreements by virtue of them becoming regulated credit agreements as defined in article 60B(3) of the RAO, whilst others will result from FCA rules or standard industry practices (such as the sharing of information between lenders and credit reference agencies). The government confirmed the approach to these elements of regulation in its consultation response. However, given that stakeholders have continued to show an interest in these areas, this chapter summaries the government's policy position.

### Creditworthiness and credit files

5.2 As set out in the government's consultation response, the government considers that proportionate regulation of newly regulated agreements includes a tailored application of some of the FCA's current rules on creditworthiness assessments. The government's view is that it is for the FCA to decide how the current rules need to be tailored for these products.

5.3 The consultation response also set out the government's view that there should be clear, consistent and timely credit reporting of newly regulated agreements, across the three main credit reference agencies. The government also notes that the FCA published an interim report on its Credit Information Market Study on 22 November 2022<sup>6</sup>, which discusses some of the issues that have previously been raised about how BNPL and other exempt agreements will be recorded on credit files.

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<sup>6</sup> [MS19/1: Credit Information Market Study Interim Report and Discussion Paper](#)



## Content of agreements

5.4 The government set out in its consultation response that it intended to prescribe the form and content of newly regulated agreements in legislation. The government's view is that this approach will provide an appropriate degree of friction in the transaction. This friction strengthens consumer protection and ensures that consumers are given the information that they need to make effective decisions about whether taking out an agreement is right for their circumstances, and to understand their ongoing obligations under an agreement.

5.5 The government also set out that it would carefully consider what that form and content of agreements should be, and whether any changes might be necessary to the current requirements set out in the Consumer Credit (Agreements) Regulations 2010. Having carefully considered stakeholder feedback, the government's view is that it is proportionate for the current requirements for the content of agreements to apply to newly regulated agreements. However, the government is keen to hear stakeholders' opinions on whether its view is correct.

**Question 16: do you think that the requirements for the content of agreements set out in the Consumer Credit (Agreements) Regulations 2010 are proportionate to apply to agreements that will be brought into regulation?**

## Arrears, default and forbearance

5.6 In its consultation response, the government set out that it considered the FCA's rules on the treatment of customers in default or arrears and the statutory requirements on provision of information to consumers in arrears and default to be important consumer protections. As a result, the government set out that the CCA requirements on the treatment of consumers in financial difficulty would apply to newly regulated agreements.

5.7 However, some stakeholders had pointed out that the current CCA requirements on post-contractual information, particularly the timing of when this information must be sent, may need to be tailored for BNPL agreements given their sometimes very short-term nature. The government therefore said that it would further consider whether tailored requirements are appropriate.

5.8 Having carefully considered this, the government's view is that a legislative change to the timings of trigger points at which information must be sent is not necessary. However, this could be considered further as part of the broader CCA reform referenced in paragraph 3.2.

## Section 75 of the CCA

5.9 With regard to the application of section 75 of the CCA, the government's view remains that which was set out in the government's consultation response, which is that:

- section 75 of the CCA is a strong and well-known consumer protection measure, and it should apply to newly regulated agreements
- the monetary thresholds for section 75 should not be amended for newly regulated agreements, meaning that it will not apply to claims relating to a single item to which the supplier of goods or services has attached a cash price of less than £100 or more than £30,000.

## FOS jurisdiction

5.10 The government's view is that proportionate regulation of newly regulated agreements should include the ability for consumers to access the FOS for issues concerning the conduct of lenders. The government notes that some stakeholders have raised concerns about the potential disproportionality of the FOS case fee when compared with the typical value of newly regulated agreements. Whilst it is for the FOS to consider its case fees, the government continues to engage with the FOS as it prepares its approach.

# Chapter 6

## Impact Assessment and Equalities Impacts

6.1 The government's proposed amendments to the regulatory framework that will 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.

6.2 The government is developing its impact assessment using information provided in response to its previous consultation, as well as via engagement with stakeholders. 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 17: 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?**

6.3 The government notes that impacts of regulation are also dependent on the FCA's final rules, on which the FCA will consult and undertake a cost-benefit analysis.

6.4 This chapter sets out the government's preliminary assessment of the equalities impacts of regulation, which will be considered in further detail in the government's impact assessment.

### Equalities Impacts

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

- eliminate discrimination
- advance equality of opportunity
- foster good relations between different people when carrying out their activities.

6.6 To assist in fulfilling its obligations under the PSED and as part of the policy development process, the government asked stakeholders in

its October 2021 consultation what impacts they would expect to see on persons sharing any of the protected characteristics<sup>7</sup> as a result of the proposed approach to regulation. The government considers that regulation will help to mitigate the risks of any potential consumer detriment crystallising for persons with protected characteristics that use newly regulated agreements.

**6.7** There was limited substantive evidence provided by stakeholders in response to the government's question. However, the evidence provided did suggest that some persons sharing particular protected characteristics may be more likely to use BNPL. For example, StepChange debt charity's consultation response suggested that 15% of those in a minority ethnic group hold a BNPL loan compared to 10% of those who report a white ethnicity.

**6.8** 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.

**6.9** However, other consultation responses indicated that higher use of BNPL amongst ethnic minority communities could be a due to barriers faced accessing other types of credit agreement. In addition, evidence suggested that BNPL may not be perceived as credit by some customers, as an interest-free product may also be considered Sharia-compliant. The government therefore considers 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.

**6.10** The government acknowledges the evidence that suggests that some consumers sharing particular protected characteristics may be at a higher risk of suffering detriment and considers that regulation will help mitigate this detriment. However, the government is also keen 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 those protected characteristics.

**6.11** The government's provisional view is that the proposed approach to regulation will address the risks of consumer detriment crystallising more broadly, including those sharing particular protected

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<sup>7</sup> The protected characteristics of age; disability; race; religion/belief; sex; sexual orientation; pregnancy and maternity; and gender reassignment and, in respect of the duty not to discriminate, marriage and civil partnership.

characteristics. The government also considers that its proportionate approach to regulation will ensure that consumers, including those sharing particular protected characteristics, will continue to be able to access useful, interest-free products. However, the government is keen for further stakeholder feedback on the anticipated impact of regulation on those sharing any of the protected characteristics. The government will consider the equalities impact in more detail in its impact assessment.

**Question 18: 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 19: Do you have any further data you can provide on the potential impacts on persons sharing any of the protected characteristics?**

# Chapter 7

## Summary of questions

### Chapter 2

**Question 1:** do you have any comments on the proposed approach and/or drafting to bring agreements into regulation that are provided by a third-party lender in article 3(4) of the draft legislation?

**Question 2:** do you have any comments on the proposed approach taken to bringing agreements into regulation where a lender purchases goods or services from the original supplier in the way set out in new draft paragraph 7A(b) in A60F?

**Question 3:** do you consider that there may be unintended consequences of the government's proposed drafting of the proposed legislation to capture these agreements?

**Question 4:** do you have any comments on the proposed legislative approach and/or the drafting which seeks to ensure that agreements made by third-party lenders that finance premiums under contracts of insurance will continue to be exempt under A60F(2)?

**Question 5:** do you think it is appropriate for there to be an exemption for interest-free borrower-lender-supplier credit agreements repayable in under 12 months in 12 or fewer instalments, where they are provided by registered social landlords to their tenants to finance the provision of goods and services?

**Question 6:** do you have any comments on the proposed drafting which seeks to ensure that agreements that are offered by registered social landlords to their tenants and leaseholders, and where there is a third-party lender involved, will continue to be exempt under A60F(2)?

**Question 7:** do you have any comments on the proposed drafting which seeks to ensure that agreements (i) where the borrowers are employees and, (ii) which result from an arrangement between their employer and the lender or supplier, will continue to be exempt under A60F(2)?

### Chapter 3

**Question 8:** do you have any comments on the proposed legislative approach and/or drafting taken to exempting merchants from credit broking regulation?

**Question 9:** do you have any comments on the proposed legislative approach and/or drafting to regulate merchants as credit brokers when they are a domestic premises supplier?

**Question 10:** do you have any comments on the proposed legislative approach and/or drafting which seeks to ensure that unauthorised merchants will be required to have their promotions approved by an authorised person?

**Question 11:** do you have any comments on the proposed legislative approach and/or drafting which seeks to disapply the CCA requirements on pre-contractual information for agreements that are brought into regulation?

**Question 12:** do you have any comments on the proposed legislative approach and/or drafting to disapply the DMRs for unauthorised intermediaries where information is disclosed by lenders in accordance with the FCA's rules on distance marketing for authorised persons?

**Question 13:** do you consider that this proposed approach will give firms sufficient flexibility to provide information in accordance with CCA pre-contractual requirements rather than the tailored regime for agreements that will be brought into regulation?

**Question 14:** do you have any comments on the proposed legislation which seeks to disapply the small agreements provisions for agreements that will be brought into regulation?

## Chapter 4

**Question 15:** do you have any comments on the proposed legislation that seeks to implement the TPR?

## Chapter 5

**Question 16:** do you think that the requirements for the content of agreements set out in the Consumer Credit (Agreements) Regulations 2010 are proportionate to apply to agreements that will be brought into regulation?

## Chapter 6

**Question 17:** What do you expect the impact 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 18:** 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 19:** Do you have any further data you can provide on the potential impacts on persons sharing any of the protected characteristics?



# Chapter 8

## Responding to this consultation

8.1 This consultation is open for 8 weeks, and closes at 11:59pm on 11 April 2023.

8.2 Following the consultation, the government will provide a summary of responses and set out the next steps, including timings.

### Who should respond?

8.3 A range of groups will be interested in this consultation. The government welcomes responses from all stakeholders, including:

- Lenders which offer agreements that will be brought into regulation
- Lenders which offer other regulated credit agreements
- Consumer groups
- SME lenders
- Merchants which offer agreements provided by third-party lenders that will be brought into regulation as a payment option
- Insurance providers and insurance brokers
- Registered social landlords
- Employers

### When and how to submit responses

8.4 This consultation will remain open for 8 weeks, and close on 11 April 2023. Please submit responses to:

[BuyNowPayLater@hmtreasury.gov.uk](mailto:BuyNowPayLater@hmtreasury.gov.uk).

8.5 Alternatively, responses can be submitted to: Buy-Now Pay-Later Consultation, Personal Finances and Funds Team, 1 Red, HM Treasury, 1 Horse Guards Road, London SW1A 2HQ

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

8.6 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)

8.7 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)

8.8 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

8.9 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

8.10 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

8.11 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).

8.12 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).

8.13 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.

8.14 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.

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

8.16 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>

8.17 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)

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

8.19 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)

8.20 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](mailto:dsar@hmtreasury.gov.uk)

## Complaints

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

8.22 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](mailto:casework@ico.org.uk)

8.23 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](http://www.gov.uk)

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

Correspondence Team  
HM Treasury  
1 Horse Guards Road  
London  
SW1A 2HQ

Tel: 020 7270 5000

Email: [public.enquiries@hmtreasury.gov.uk](mailto:public.enquiries@hmtreasury.gov.uk)