



HM Treasury

Regulation of Buy-Now Pay-Later Consultation

October 2021

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ISBN 978-1-911686-33-0

PU 3162

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Executive summary

Consumer credit has been regulated in the UK since the Consumer Credit Act (CCA) was passed in 1974. Since then, responsibility for much of this regulation has passed to the Financial Conduct Authority (FCA), although many parts of the CCA continue to apply directly. Throughout the long history of consumer credit regulation, there has been an exemption in place designed to allow the delayed payment of goods and services as long as that delay was time-limited and did not involve the charging of interest. This exemption has ensured that invoicing did not fall within the definition of regulated consumer credit, but also covers arrangements whereby goods are paid for through a number of instalments.

Over time, a large range of products and business practices have evolved, operating under this exemption. However, in recent years there has been a rapid growth in the use of the exemption in the form of 'Buy-Now Pay-Later' (BNPL) products, in particular through the widespread use of this product as a payment option by online retailers. Alongside the step-change in the use of these products, there has been a rise in concerns about whether BNPL is giving rise to consumer detriment. This was investigated in more detail by *The Woolard Review*, published in February, which identified a number of areas of potential consumer detriment that could crystallise as this market continues to grow such as its promotion to consumers, poor consumer understanding of the product, lack of affordability assessments and inconsistent treatment of customers in financial difficulty.

Recognising the transformation in the use of this regulatory exemption, and the issues identified in *The Woolard Review*, the government committed to introduce balanced and proportionate regulation of BNPL. This consultation seeks views to inform final decisions about the shape and form that such regulation should take.

The principle of proportionality is important across any regulatory intervention, as there is always a balance to be struck to ensure that consumers are given appropriate protections without unduly limiting the availability and cost of useful financial products. In the case of BNPL this principle of proportionality will be achieved by:

- ensuring that the scope of the new regulations is defined as closely as possible to target those products where there is potential for consumer detriment; and
- calibrating the regulatory controls that are put in place for BNPL 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.

Chapter 2 of this document explores the first of these two parameters in more detail, through a closer examination of the products that use the current exemption. Chapter 3 examines the second of these parameters, discussing the key considerations the government has identified in designing a proportionate system of regulatory controls. Throughout the work to develop this policy, the government is also focused on designing a regime that is straightforward for firms to understand and for the regulator to enforce, and so would value feedback that helps us to further understand the practical implications of the policy options.

Chapter 4 of the consultation document seeks input to help us assess the impacts of our policy options, on businesses and consumers.

Consultation and how to respond

The purpose of publishing the consultation document is to enable interested parties or stakeholders to make representations on the scope and form of BNPL regulation.

Responses are invited by **6 January 2022** and should be sent to 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 5.

Chapter 1

Background and context

Consumer credit regulation

1.1 Unsecured consumer credit is regulated under the framework provided by the Consumer Credit Act 1974 (CCA) and the Financial Services and Markets Act 2000 (FSMA). Broadly, a consumer credit agreement is one under which an individual is granted credit (defined as a cash loan or other 'financial accommodation'). The scope of regulation, that is exactly which types of agreement are regulated and which are not, is set out in detail in the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (the RAO). Firms which offer regulated credit agreements must be authorised to do so by the FCA, and must comply with relevant FCA rules as well as requirements in the CCA.

1.2 The regulation of consumer credit has key differences to the majority of other regulated financial services products. Broadly, for most regulated products the Treasury defines which activities are subject to regulation and delegates responsibility for this regulation to the FCA. The FCA then develops rules, consults on them, and undertakes a cost benefit analysis. For consumer credit the CCA imposes statutory obligations on firms and gives protections to consumers in addition to FCA rules. The Treasury is responsible for these statutory elements of the regulatory regime, whilst the FCA is responsible for making conduct rules in its consumer credit sourcebook (CONC) under its rulemaking process.

1.3 The RAO provides for some exemptions from regulation so that not all forms of credit are regulated. In particular, this includes an exemption for interest-free credit. The conditions that must be met in order for an agreement to fall within this exemption's scope include:

- 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 other charges.

1.4 This exemption is set out in article 60F(2) of the RAO and is referred to in this document as the 'A60F(2) exemption'. A range of financial arrangements fall into this exemption, from simply providing an invoice that permits the customer to

pay for goods and services beyond the due date, to a formal agreement to pay for items in instalments.

Use of the A60F(2) exemption

1.5 The following section sets out the key categories of credit or financial arrangements that the government has identified as currently making use of the exemption outlined in A60F(2).

Unregulated BNPL

1.6 While there are some arrangements often known as 'buy now pay later' that are regulated, the focus of this consultation is unregulated BNPL agreements. These typically split the cost of a purchase from a merchant, for example a retailer or a supplier of goods and services, into several equal amounts taken at regular intervals, usually monthly, weekly or fortnightly. It is used for the purchase of a broad and growing range of products and services. A use that has seen particularly rapid recent growth has been for the purchase of lower-value consumer goods, particularly fashion items. BNPL can also come in other forms such as a simple deferred payment, whereby a lender provides a period of time in which a customer does not have to pay, with payment then taken from the customer's account a set time after the purchase is made and only then if the item is not returned by the customer. This product is often used by those who want to 'try before they buy', particularly clothing. No interest is charged on these agreements. **These unregulated BNPL products are the focus of this consultation and are referred to as BNPL throughout this document.**

Growth of BNPL

There is strong evidence to demonstrate the rapid expansion of the BNPL model in recent years, and reason to believe that this growth will continue.

- The value of transactions using BNPL from the main providers more than tripled in 2020.¹
- 11% of consumers (i.e. around 5 million individuals) said they had used a BNPL product since the start of the COVID-19 pandemic.²
- From the firms surveyed by the FCA, the total value of BNPL transactions between January to December 2020 was £2.7bn³, and is expected to grow rapidly by 2024.

Short-term Interest-free Credit

1.7 Alongside BNPL there are also other well-established financial arrangements which make use of the A60F(2) exemption. Arrangements include formal interest-

¹ *The Woolard Review* (<https://www.fca.org.uk/publication/corporate/woolard-review-report.pdf>)

² *The Woolard Review*

³ *The Woolard Review*

free instalment loans, repayable in under a year, generally offered by a third party and used to finance higher-value goods, as well as those which allow monthly payments for club memberships and season tickets, more often offered without third-party involvement. **Throughout this consultation we refer to these other types of product as short-term interest free credit to distinguish them from BNPL.**

1.8 These products have been available for decades, particularly for higher-value items like white goods and other electronics, furniture and dental procedures. This type of credit is used more frequently in-store rather than online, and its usage predates the rapid increase in BNPL in recent years.

Invoicing

1.9 Invoicing arrangements between a supplier and customer, which permit the customer to pay for goods or services at a date later than the contractual due date, are in effect credit agreements. However they are typically not regulated as such arrangements would generally fall within the A60F(2) exemption. Invoicing directly between a provider of goods and services and a consumer forms a crucial part of day-to-day business activity, and is a core means by which goods and services are provided to consumers, particularly by tradespeople.

Consumer detriment arising from the A60F(2) exemption

1.10 The A60F(2) exemption has been in place for many years with limited concerns about consumer detriment. Agreements made under the exemption are of a shorter duration compared to the majority of regulated credit products. This, in addition to their interest-free nature, makes them inherently lower risk than the majority of other regulated credit agreements. They give consumers the flexibility to spread or delay payments, which can be a useful tool for people to manage their finances when used appropriately and can provide more choice for consumers on how they pay for goods and services.

1.11 However, concerns about the use of this exemption have grown as BNPL has risen in popularity and, earlier this year, the market was explored further by *The Woolard Review*⁴ - A review of change and innovation in the unsecured credit market. Based on the current evidence, the government's view is that the nature of BNPL agreements is likely to present greater risk of consumer detriment than other agreements that fall within the A60F(2) exemption.

1.12 The potential sources of consumer detriment that have been identified both in *The Woolard Review* and elsewhere include:

- 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 creditworthiness assessments;
- the potential to create high levels of indebtedness;

⁴ *The Woolard Review* (<https://www.fca.org.uk/publication/corporate/woolard-review-report.pdf>)

- 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.

1.13 However, the evidence base for these potential sources of detriment remains limited, and one of the objectives of this consultation is to further build this understanding, to inform final policy decisions.

The proportionate regulation of the BNPL market

1.14 *The Woolard Review* recommended that BNPL should be brought within the scope of FCA regulation. However, it also said that the FCA and the Treasury should take care not to include other nonfinancial organisations which rely on the A60F(2) exemption, including healthcare services and sport clubs.

1.15 On 2 February 2021, in parallel with the publication of *The Woolard Review*, the government announced its intention to regulate BNPL products and to consult stakeholders to ensure a balanced and proportionate approach is taken, recognising that their interest-free nature is inherently lower risk than interest-bearing products, and that this type of credit provides a valuable mechanism to spread payments for many consumers.

1.16 To ensure the Treasury has the powers it may need to create a proportionate approach, the government tabled an amendment to the Financial Services Bill, now Act⁵, on 17 March. It enables the Treasury to exclude provisions of the CCA from applying to agreements within the relevant exemptions, either when they are brought within the scope of regulation or at any point thereafter.

1.17 This consultation aims to gather the evidence needed to develop this proportionate approach, based on the following objectives:

- BNPL activities should be subject to an intervention which is proportionate to the level of risk that they present and is not so burdensome that it inhibits the product being offered or reduces consumer choice;
- Consumers should be adequately and fairly protected from detriment, and can access dispute resolution regarding the conduct of lenders;
- Regulation for BNPL should not adversely impact competition and innovation across the wider consumer credit and payments markets;
- Any burden on merchants offering BNPL as a payment option would be proportionate and manageable and should not disadvantage Small and Medium Enterprises (SMEs) over larger merchants.

1.18 In order to achieve these objectives the government must consider two key parameters. The first is **the scope of any new regulation**, i.e. identifying and defining precisely which types of credit agreement require the additional consumer protections provided by regulation. The line must be drawn clearly and in a way that

⁵ <https://www.legislation.gov.uk/ukpga/2021/22/section/37/enacted>

does not have unintended consequences for valuable consumer products but also does not allow the same consumer detriment to re-emerge from firms circumventing regulation through small changes to their business models. The second parameter is around **what regulatory controls are imposed on credit agreements** that newly fall into the scope of regulation. There are a number of choices which are critical to ensuring a proportionate regulatory approach.

1.19 This consultation document seeks input on our policy approach to both these questions.

Chapter 2

The scope of BNPL regulation

2.1 The first key parameter that needs to be determined, to ensure a proportionate approach to the regulation of BNPL is the scope of any regulatory controls, that is what types of currently exempt credit agreement they should apply to, and what types they should not. This requires a robust understanding of the potential for consumer detriment across the range of products currently making use of the A60F(2) exemption. But there is also an associated practical question of how to draw any new regulatory boundary so that it is clear and, in addition, able to accommodate future changes in a rapidly evolving market.

Development of the consumer credit market and associated regulation

2.2 Some further context on how consumer credit markets and associated regulation has developed provides useful background in determining the scope of future BNPL regulation.

2.3 Consumer Credit has been comprehensively regulated since the CCA was passed in 1974. From the start an exemption was included, which was designed to ensure that businesses which defer payment for the provision of goods and services were not brought within the scope of consumer credit regulation. On 1 April 2014, responsibility for consumer credit regulation was transferred from the OFT to the FCA. As part of that transfer, exemptions in the CCA and associated secondary legislation were subsumed by provisions in the RAO⁶.

2.4 Further detail on the background and history of consumer credit regulation is contained in Annex A.

2.5 Over time, the nature of the exemption has been amended to keep up with market developments, but has enjoyed broad support with limited evidence of consumer detriment. As it stands, a number of different types of agreement fall within the exemption from regulation in A60F(2) of the RAO. The conditions that must be met in order for an agreement to fall within the A60F(2) exemption are set out in chapter 1. The key categories of agreement that we have identified, and which are also set out in chapter 1, are BNPL, short-term interest-free credit, and invoicing.

2.6 However, *The Woolard Review* found that recent market developments suggested a potential for consumer detriment to arise. Developments in consumer behaviour in recent years have seen a rapid shift toward online consumption, in which a wider suite of payment options can be offered more easily to consumers. The trend towards online consumption has been accelerated over the last 18 months as a result of the COVID-19 pandemic. In combination, this has resulted in

⁶ [SI 2013/1881](#)

the rapid growth of the BNPL business model under the A60F(2) exemption. It is this type of exempt lending under the A60F(2) exemption that was identified by *The Woolard Review* as carrying the greater risks of consumer detriment.

Categories of credit agreement using the A60F(2) exemption

2.7 This consultation examines the different categories of credit agreement that make use of the A60F(2) exemption, including the evidence for potential consumer harm in each. It does not, however, include a fuller consideration of invoicing. While invoicing between a provider of goods or services and a consumer typically makes use of the A60F(2) exemption, it is distinct from what is generally perceived as a credit agreement, and is a critical financial arrangement used by businesses across the UK in providing goods and services. The government is clear that any changes made to regulation to address potential consumer detriment from BNPL must not affect the ongoing operation of normal business practices such as invoicing, where any potential harms are far outweighed by the benefits to consumers and businesses.

2.8 The two key categories that require further consideration for the purposes of this consultation are BNPL and other, more traditional, forms of short-term interest-free credit.

BNPL: business model and evidence of consumer detriment

2.9 The unregulated BNPL agreements that are the subject of this consultation tend to follow this common model:

- a consumer decides to make a purchase from a merchant which offers BNPL from a third-party provider;
- either the consumer already has an account with the third-party provider or, if not, they can open a new account;
- the consumer chooses to enter into an agreement with the third-party BNPL provider to finance the purchase at the point of sale;
- the BNPL provider remits funds to the merchant, minus a percentage of the full value of the credit agreement (the merchant fee).
- the consumer can use the account they have with the third-party BNPL provider to finance purchases from a wide range of other merchants who offer BNPL from that provider as a payment option.

2.10 This model currently represents the most common type of BNPL. However, other models are emerging, for example where a third-party lender legally purchases goods from a merchant and then sells them on to the consumer, or where there is no pre-existing relationship between the merchant and the lender.

2.11 Other key features of these agreements include:

- a tendency for transactions and agreements to be relatively low value, with the average amount being £65-£75;
- their use in online transactions, particularly being embedded in e-commerce customer journeys;

- particularly short repayment terms, either deferring payment for a month or splitting repayments over three to four months.

2.12 However, there remain substantial differences between the business conduct of different operators, for example in their treatment of those in payment difficulties.

2.13 As the BNPL model has developed, it now represents the most common type of formal credit agreement that falls within the A60F(2) exemption. This has also meant that it has attracted greater scrutiny about the potential consumer detriment that it can cause (as identified by *The Woolard Review* and set out in chapter 1).

2.14 However, while the government agrees with *The Woolard Review* about these potential sources of consumer detriment, there is relatively limited evidence of widespread consumer detriment materialising at this stage. Understanding the way in which any consumer detriment is linked to specific aspects of the BNPL business model is critical to ensuring that the scope of regulation is appropriately drawn.

Question 1: Do you agree with our analysis of the business models that underpin the BNPL market?

Question 2: Do you have information to provide government with a more granular and up-to-date understanding of the BNPL market?

Question 3: Do you have further analysis or evidence of consumer detriment in the BNPL market?

Question 4: Do you have analysis that would support us in identifying which specific elements of the BNPL business model pose particular risks?

Short-term interest-free credit: business model and evidence of consumer detriment

2.15 Until recently the type of credit agreements that made most use of the A60F(2) exemption are those we have labelled short-term interest-free credit.

2.16 The original model for the provision of short-term interest-free credit usually relied on merchants themselves offering options to pay by instalments, without the presence of a third-party lender in the transaction. Examples of this type of arrangement include a shop providing payments by instalment for a specific purchase or payments on account. It is these kinds of arrangement that the exemption was originally designed to exclude from regulation, when the CCA was first introduced. Many of these arrangements are still in use today. They can be divided into two types: arrangements where merchants themselves extend credit in order to offer payment by instalments, and arrangements where an independent third-party lender is the provider of credit. Arrangements where merchants extend credit themselves have generally been superseded by third-party lending, though the former may still be involved in financing season tickets and subscriptions such as gym and club memberships. Use of third-party lending allows merchants to offer the product more easily as they do not have to administer the loan, and also limits their exposure to credit risk.

2.17 Typical features of the short-term interest-free credit business model are:

- the credit is typically used to finance higher value goods and services (such as big-ticket electronics, sports equipment, furniture and dental and medical procedures). It is also used to finance subscriptions such as gym and club memberships, or for season tickets;
- the lending tends to be carried on by third-party lenders who tend to be authorised by the FCA for other regulated activities, and the lending is often brokered on-premises rather than online;
- third-party lenders tend to have bespoke, long-term business relationships with relatively few merchants;
- credit is more commonly offered over a full year and 12 instalments, reflecting the higher value of the underlying goods or services that are typically paid for using these arrangements;
- consumers typically do not have an ongoing relationship or an account with the lender, with each credit agreement being a discrete transaction where a consumer provides their personal details.

2.18 The government's view is that short-term interest-free credit, especially when provided by third parties, appears to have some of the same potential risks for consumer detriment as BNPL, in particular:

- 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 creditworthiness assessments;
- inconsistency of treatment of customers in financial difficulty;
- the potential to create high levels of indebtedness.

2.19 In addition, there may be further risks arising from the fact that sales are more often in an in-person environment, where pressure selling can arise, and because the size of agreements will likely be larger.

2.20 However, it does not share all the risks for consumer detriment seen in the BNPL market. These differences are reflected in the fact that this type of lending has been widespread for decades and has attracted limited scrutiny or concern from stakeholders. As such, the government has not seen substantive evidence of widespread consumer detriment arising from this type of lending and is minded to draw the scope of regulation so that such credit agreements can continue outside of the regulatory boundary.

2.21 The government is keen to understand whether stakeholders share this assessment.

Question 5: Do you agree with our analysis of the business models that underpin the short-term interest-free credit market?

Question 6: Do you have information to provide government with a more granular and up-to-date understanding of the use of short-term interest-free credit?

Question 7: Do you have further analysis or evidence that supports or undermines our understanding that there is limited consumer detriment in the short-term interest-free credit market?

Question 8: Do you have analysis that would support us in identifying which specific elements of the short-term interest-free credit business model serve to protect the consumer from harm?

Differences between BNPL and other short-term interest-free credit

2.22 The section above demonstrates that there are many similarities between BNPL and other short-term interest free credit. There is also increasingly a crossover between the products, with short-term interest-free credit providers offering their payment options alongside BNPL providers at merchants' online checkouts. This is perhaps unsurprising given that they make use of the same regulatory exemption. However, there seems to be some differences in the way in which the products are offered, the way in which consumers use them and for what purposes, and this is reflected in the level of risk that those agreements pose. The government's analysis to date is that the main drivers of potential consumer detriment, as identified by *The Woolard Review* and elsewhere, are less pronounced for short-term interest-free credit than in BNPL.

2.23 Some of the key areas that our analysis has identified as potential drivers of these different risk levels are:

- The ongoing relationship that usually exists between a consumer and a BNPL provider. This means that, following the opening of an account with a BNPL provider, there is very little transactional 'friction' in taking out further BNPL credit. This reduces the opportunity for the consumer to fully consider their purchase and leads to a higher risk of payment difficulties and other problems.
- The attractive and smooth online journeys offered by providers, which further contributes to a low friction customer experience in the BNPL market, again leads to a higher risk of payment difficulties and other problems.
- The BNPL model tends to rely on a larger number of lower value purchases. This may make it more challenging for consumers to keep track of their credit in aggregate, for example where individual repayments are due.

2.24 However, it is challenging to identify exactly what drives these differences in risks to consumers, and as a result how the regulatory boundary can be drawn so that it avoids bringing into regulation credit agreements where there is limited risk of harm.

Question 9: Do you agree with the distinction between BNPL and other forms of short-term interest-free credit that has been drawn in this consultation?

Question 10: Do you have any comments on our analysis of the drivers of risk for consumers in the BNPL market?

Drawing distinction between BNPL and other short-term interest free credit in regulation

2.25 While the business models have different characteristics the government also acknowledges that there are many similarities between BNPL and other short-term interest-free credit. However, defining the scope of regulation will require the government to draw a boundary based on clear distinctions. This is a particular challenge, given that some of the different risks these forms of credit pose to consumers may be driven by characteristics such as the culture of the individual businesses.

2.26 The government has therefore also been considering options for how that boundary could be drawn in practice, alongside its analysis of the drivers of risk to consumers. The options considered so far include:

- restricting the extension of regulation to interest-free credit agreements where there is a third-party lender involved in the transaction, and keeping arrangements directly between a merchant and a consumer exempt from regulation.
- defining a BNPL agreement as one where there is a pre-existing, overarching relationship between the lender and consumer, for example where a consumer opens an account with a lender, under which the lender agrees to finance one or more transactions but where any repayments made are toward specific agreements made as part of that relationship.

2.27 On the first of these options, we are concerned that this may draw the scope of regulation too widely, drawing in a large proportion of short-term interest-free credit alongside BNPL. However, it is an option that does have advantages in terms of drawing a relatively clear regulatory boundary and would capture those agreements where we have identified most risk. We would be interested through this consultation to understand what the impact of this wider scope might be, particularly as we understand that the additional burden of regulation on providers of short-term interest-free credit may be relatively low given that they are often specialist finance firms conducting both regulated and unregulated business.

2.28 On the second, we are concerned that this would leave open the possibility of a relatively small change to the BNPL product, so that it bears more similarity to running-account credit, in order to avoid regulation.

2.29 In general we are aware that drawing an effective regulatory boundary for BNPL will also involve careful examination of the existing exemption from regulation for running-account credit, set out in article 60F(3) of the RAO. The conditions that must be met in order for an agreement to fall within this exemption's scope include the following:

- the agreement is a borrower-lender-supplier agreement for running-account credit;

- the borrower is to make payments in relation to specified periods which must be of 3 months or less;
- the number of payments to be made by the borrower in repayment of the whole amount of credit provided in each such period is not more than one; and
- the credit is provided without interest or other significant charges.

2.30 Some elements of the current fixed-term interest-free BNPL product already share some features with running-account credit, for example the existence of the overarching relationship in BNPL where successive low value individual agreements are taken out with a familiar provider is similar to a single running-account agreement under which there are multiple small drawdowns. In addition, we are also aware of some BNPL providers that already offer a running-account product. We therefore need to ensure that A60F(3) does not provide an opportunity for the unregulated BNPL model to transition to and re-emerge under this exemption. As with the approach to the A60F(2) exemption, that would need to be carefully designed to minimise the impact on other products that currently use this exemption and where we are not aware of evidence of consumer detriment, such as charge cards.

2.31 We are also aware that the A60F(2) exemption is currently used to provide interest-free credit agreements to finance the payment in instalments of insurance premiums. We will consider how any regulation may interact with these products to ensure that there are no unintended consequences.

Question 11: Do you have any suggestions on how a clear distinction could be drawn between BNPL and short-term interest-free credit?

Question 12: Do you have any comments on the option to draw that distinction by restricting the extension of regulation to interest-free credit agreements where there is a third-party lender involved in the transaction? What impact do you think this would have on short-term interest-free credit providers that would be drawn into regulation?

Question 13: Do you have any comments on the option to draw that distinction by defining a BNPL agreement as one where there is a pre-existing, overarching relationship between the lender and consumer, under which the lender agrees to finance one or more transactions but where any repayments made are toward specific agreements made as part of that relationship?

Question 14: Do you have any views on the need to amend the current exemption for running-account credit, so that it does not allow the unregulated BNPL model to re-emerge?

Chapter 3

Proportionate regulatory controls for BNPL

3.1 The second key parameter in ensuring a regulatory regime for BNPL that is proportionate and meets the objectives outlined in chapter 1, is the nature of the regulatory controls that are put in place. While there is evidence of the potential for consumer detriment in the BNPL market, it is clear that the risks of the product are inherently lower than an interest-bearing credit product. The government's position is therefore that there are a number of regulatory controls that exist for the mainstream regulated credit market that might be disproportionate in this market. This chapter looks at these areas in more detail, highlighting where the government thinks that a different approach may be necessary and seeks views on these.

3.2 This chapter is focused on what changes are necessary in legislation to ensure a proportionate regulatory approach. However, as explained in chapter 1, the detail of the regulatory regime and the FCA rules that will apply will be developed by the FCA and subject to consultation.

The application of credit broking regulation

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'. Businesses carrying out credit broking need to be authorised and regulated by the FCA and comply with relevant FCA rules and CCA provisions.

3.4 Credit broking is considered a lower risk activity where a business' main trade is not the provision of financial services. This is reflected in the fact that such firms are subject to fewer regulatory requirements, for example around the minimum standards a firm has to meet to become authorised (these are known as 'threshold conditions'). These firms are referred to by FCA as 'limited permission' firms – because their permissions are limited by the FCA to an activity such as credit broking that entails fewer requirements.

3.5 Merchants that offer the use of BNPL and short-term interest-free agreements as a payment option are not currently credit broking because broking such agreements is not within the regulatory perimeter. However, if the exemption in article 60F(2) is amended so that some or all of these agreements become regulated, then merchants' broking of such credit agreements would constitute the regulated activity of credit broking. Consequently, they would need to apply to the FCA for authorisation and comply with relevant regulation.

3.6 Initial discussions with stakeholders have identified significant burdens if merchants which offer unregulated BNPL were subject to credit broking regulation. These would include:

- the need to apply for authorisation;
- ongoing monitoring of compliance with the FCA rules;
- regularly submitting data to the FCA on financial information and transaction volumes;
- informing the FCA about changes to the business;
- paying the FCA's periodic fees and levies.

3.7 We would expect compliance with such requirements to have a significant cost for most businesses, with a particularly large relative impact on sole traders and micro-SMEs that exclusively trade online, and use BNPL as a means to expand payment choices for their customers. This would also impact a very large number of businesses, given how widespread it is for merchants to offer BNPL as a payment option.⁷

3.8 Given those potential burdens, there is a risk that many merchants would instead cease to offer BNPL as a payment option. The government's view is that this would limit consumer choice and may confer an unfair competitive advantage to larger merchants, many of whom are already FCA authorised for credit broking or have the capacity and means to become so.

3.9 The government wants to ensure that any intervention to regulate BNPL does not prevent merchants from offering a payment choice that consumers find convenient and that has become embedded in the e-commerce customer journey. The government also wants any regulation of BNPL to be tailored to the specific risks and features of the product. The government considers that any potential risks to consumer detriment arising from merchants as credit brokers could be mitigated by existing protections and as well as other interventions that could apply under any regulation of BNPL as set out in this chapter at 3.12. These include:

- amendments to the financial promotions regime;
- the application of specific CCA provisions; and
- the Consumer Protection from Unfair Trading Regulations 2008, which protects consumers from unfair or misleading trading practices.

3.10 The government's view at this stage, therefore, is that any regulation of BNPL could be accompanied by an exemption so that the broking of BNPL credit by a merchant would not lead to a requirement that the merchant is subject to regulation as a credit broker.

Question 15: Do you agree that in any regulatory intervention merchants that offer BNPL as a payment option should not be subject to FCA regulation as credit brokers?

⁷ From engagement with industry, the government understands that the number of merchants that currently offer BNPL as a payment option is in the low tens of thousands, with this number expected to grow, potentially very quickly.

Question 16: If merchants offering BNPL are exempted from credit broking regulation, do you have any views on other ways to mitigate any potential risks to consumer detriment arising from merchants?

3.11 It may be necessary for some exceptions to apply to any general exemption for merchants using BNPL. For example, the government's view is that the protections of credit broking regulation may be appropriate for merchants that sell goods or services when visiting customers in their homes ('domestic premises suppliers'), given the particular risks of pressure selling that exist in that context. Reflecting the higher risk of detriment, regulated domestic premises suppliers are subject to the FCA's full permissions regime.

Question 17: Do you have any views on whether such an exemption from credit broking should extend to all merchants, or whether there should be limited exceptions (such as for domestic premises suppliers)?

Advertising and promotions

3.12 Retailers and BNPL providers promote products to consumer through advertisements and promotions. These could be online, in-store, in print, on television, on radio, or through social media. In addition to the marketing undertaken by lenders, the merchants offering the products can also promote them. This includes: through advertisements on their websites (including nudges during the online customer journey) or in-store; offering discounts when using the product; through the layout of the payment options on the checkout page of a transaction; or, verbally by sales staff.

3.13 *The Woolard Review* set out some specific concerns on the ways in which BNPL is currently advertised and promoted. These included that:

- the presentation of BNPL offers and the overall consumer journey could be designed to drive sales from merchants without giving due consideration of the affordability of the BNPL commitment the consumer is taking on;
- BNPL advertising often focuses on aspiration, tapping into consumer desire to live a certain lifestyle, and that this could play into consumers' behavioural biases make it more likely that consumers make impulsive decisions that are not in their best interests;
- BNPL offers are sometimes presented as a default payment method or in a list of options, with the details of each option not being made clear, leading to confusion for consumers.

3.14 There are some existing requirements on BNPL lenders and merchants, around advertising and promotions. BNPL agreements are subject to regulations for advertising set out by the UK Advertising Codes and monitored by the Advertising Standards Authority (ASA) and the Committee of Advertising Practice (CAP). If a firm breaks the Advertising Codes, the ASA is able to make rulings on specific adverts. If a firm persistently breaks the Advertising Codes, the ASA can refer them to other bodies for further action, such as Trading Standards and OFCOM. The ASA often liaise with the FCA in connection with its rulings.

3.15 The ASA has already made interventions relating to the advertising of BNPL. It published guidance in December 2020 which outlines that BNPL providers must ensure that consumers know that BNPL is a credit product, that all the information required is appropriately available, and that adverts shouldn't imply the BNPL is risk-free or suitable for everyone. The ASA has also made rulings on specific BNPL adverts.

3.16 The FCA, in conjunction with the Competition and Markets Authority, also has wider powers under the Consumer Protection from Unfair Trading Regulations 2008 (CPUTR), which it is able to enforce in relation to unregulated credit agreements, including BNPL. The rules set out in the CPUTR state that firms must provide consumers with the information necessary to make informed decisions and not omit or hide material information which the average consumer needs.

3.17 However, these consumer protections could be strengthened further by the application of the financial promotions regime to BNPL promotions. The financial promotions regime already applies to a broad range of financial and investment products. In consumer credit, the regime captures those communications that are 'invitations or inducements' to enter into a credit agreement and requires those communicating them – whether they are merchants or credit providers – to either be FCA-authorized or to get approval from an FCA-authorized person. The promotion has to meet standards set out in the FCA's rules on financial promotions and communications including that it is 'clear, fair and not misleading'.⁸

3.18 However, not all promotions of BNPL agreements are currently subject to the financial promotions regime. This is due to a regulatory exemption in the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005. This exemption means that merchants who communicate for the purpose of introducing a customer to an unregulated BNPL agreement which is offered by a lender which is authorised for other lending does not need to seek approval of the promotion from an authorised person. However, the government considers that proportionate regulation of BNPL could include amendment of the relevant legislation so that all promotions of BNPL agreements also fell within the financial promotions regime.

3.19 In practice, this could mean that merchants would be required to obtain approval for promotions of BNPL products from an authorised person (which could, but does not have to be, their BNPL lender partner). In addition, the government has proposed broader strengthening of the financial promotions regime.⁹ This proposed new framework requires that any authorised person wishing to approve promotions should go through a gateway process managed by the FCA where they are subject to further checks and training. The government envisages that, in combination, this will ensure effective oversight by improving due diligence and making sure approving firms have relevant expertise. It would also provide a substantial mitigation from any consumer detriment that could arise from merchants not being subject to credit broking regulation.

3.20 In addition, the regulation of BNPL would also mean that the FCA could supervise lenders' pre-contractual screens to ensure that, for instance, negative

⁸ These are set out in CONC 3.3 <https://www.handbook.fca.org.uk/handbook/CONC/3/3.html>

⁹ Regulatory Framework for Approval of Financial Promotions : Consultation Response https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/995565/HMT_WR_113_Consultation_Response.pdf

consequences like arrears fees and possible transfer of the debt to a debt collection agency are communicated with sufficient prominence. The government's view is that if BNPL agreements are regulated but merchants do not present sufficient information about the product or present misleading information, the lender screens would mitigate these risks by enabling the consumer to make a properly informed decision.

Question 18: Do you think that the current requirements on BNPL merchants and lenders around advertising and promotion are sufficient?

Question 19: If you think that the requirements need strengthening, would the application of the financial promotions regime be appropriate, or are there any features specific to BNPL products that warrant different requirements?

Pre-contractual information

3.21 A significant component of existing consumer credit regulation is the provision of clear pre-contractual information, so that consumers understand the key features and risks of financial products before they take them out. While BNPL lenders do provide pre-contractual information, this is in a form that they choose, rather than is prescribed in regulation. This may lead to a risk that firms do not give sufficient prominence to important information about the agreement or fail to provide it at all.

3.22 Section 55 of the CCA sets out in detail the form and content of pre-contractual information that must be provided for regulated credit agreements, including the Standard Consumer Credit Information form. In addition to these statutory requirements, firms must comply with FCA rules on pre-contract disclosure and adequate explanations.¹⁰

3.23 The government's view is that the full extent of CCA-mandated pre-contractual information, when coupled with the requirements in FCA regulation, may not be appropriate for BNPL agreements because:

- The risks of the product are lower given that it is interest free.
- The mandated information about the cost of the credit is not well suited to BNPL products, given that they do not charge interest and tend to be of a significantly smaller size and duration than regulated consumer credit products.
- A customer is likely to enter into a BNPL agreement online and with much greater frequency than a traditional credit product, and so there is a particularly high risk that the customer will not engage with long and detailed information disclosures.

3.24 Therefore, the government's view at this stage is that for pre-contractual information, proportionate regulation of BNPL could rely solely on FCA rules, while the detailed and inflexible requirements for information disclosure in section 55 of the CCA could be disapplied.

3.25 These FCA rules require firms to make adequate pre-contractual explanation in order to place the customer in a position to assess whether the agreement is

¹⁰ These are set out in CONC 4.2 <https://www.handbook.fca.org.uk/handbook/CONC/4/2.html>

adapted to the customer's needs and financial situation. In particular the rules say that a firm must provide information setting out:

- the features of the agreement which may make the credit to be provided under the agreement unsuitable for particular types of use;
- how much the customer will have to pay periodically and, where the amount can be determined, in total under the agreement;
- the features of the agreement which may operate in a manner which would have a significant adverse effect on the customer in a way which the customer is unlikely to foresee;
- the principal consequences for the customer arising from a failure to make payments under the agreement at the times required by the agreement including, where applicable and depending upon the type and amount of credit and the circumstances of the customer:
 - the total cost of the debt growing;
 - incurring any default charges or interest for late or missed payment or under-payment;
 - (potentially) impaired credit rating and its effect on future access to or cost of credit;
 - The debt being passed on to a debt collection agency.

3.26 The government considers that these rules would be sufficient for BNPL albeit recognising that the FCA could make amendments, following consultation and cost benefit analysis, to tailor them to take into account the specific nature of BNPL agreements if they are brought into regulation.

Question 20: Do you agree that the approach to pre-contractual information outlined is consistent with a proportionate approach and the government's objectives for BNPL regulation?

Form and content of the credit agreement

3.27 Section 60 of the CCA¹¹ and regulations made under that section¹² also set out the form and content that regulated credit agreements should take. The government's view at this stage is that this may be another example where the mainstream consumer credit regulations are inappropriate for BNPL agreements given the particular characteristics of the product (i.e. the consumer risks posed and the way that the product is typically used). Instead, it may be necessary to develop bespoke legislation on the form and content requirements for BNPL, which better suit the features of the product and how it is used by consumers in practice.

Question 21: Do you agree with the government's assessment that BNPL agreements are likely to need bespoke form and content requirements?

¹¹ <https://www.legislation.gov.uk/ukpga/1974/39/section/60>

¹² The Consumer Credit (Disclosure of Information) Regulations 2010 ([SI 2010/1013](#))

Question 22: Do you have any views on what form agreements for BNPL should be required take, and what content they should contain?

Improper execution

3.28 Section 61 of the CCA sets out that a regulated credit agreement is not properly executed unless a document in the prescribed form and containing the prescribed content is signed in the prescribed manner¹³. Section 65 of the CCA sets out that the consequences of an agreement not being properly executed are that it becomes unenforceable by the lender unless the lender obtains a court order.

3.29 These mechanisms provide very strong incentives to lenders to provide the necessary information to a consumer or risk the agreement becoming unenforceable. The government's view is that these could be a valuable element of a future BNPL regulatory framework.

3.30 In practice, this would mean that there would be more friction in the transaction, particularly for digital BNPL, as consumers will need to consider an agreement and take steps to provide a signature. However, it could be argued that this friction in the customer journey could be useful, giving customers an opportunity to more fully consider whether the credit agreement they are entering meets their needs.

Question 23: What are your views on applying CCA provisions on improper execution to BNPL agreements? Do you think the consequential sanctions for improper execution should apply to BNPL agreements under any regulatory intervention?

Creditworthiness assessments

3.31 Because BNPL is not currently regulated by the FCA, there is no obligation for providers to conduct creditworthiness assessments as part of either the onboarding of new customers or when entering into individual agreements. This was a key concern raised by *The Woolard Review*.

3.32 Creditworthiness assessments comprise credit risk and affordability. Credit risk is the risk to the lender that the customer will not repay the credit, while affordability is about the ability for the customer to repay without the payments having a detrimental impact on their wider financial situation. FCA rules require lenders to undertake creditworthiness assessments of borrowers before entering into a regulated credit agreement, or before significantly increasing credit limits.

3.33 Creditworthiness assessments help ensure that consumers don't take on debts that they cannot reasonably repay, and are a key feature of responsible lending practices. For that reason, the government would anticipate that proportionate regulation of BNPL would include the application of the FCA's current rules on creditworthiness to BNPL agreements.¹⁴ In this case, it would be for the FCA to decide whether amendments need to be made to its rules to tailor them for BNPL agreements.

¹³ Electronic signatures are permitted

¹⁴ These are set out in CONC 5.2A <https://www.handbook.fca.org.uk/handbook/CONC/5/2A.html>

3.34 We also recognise that concerns have been raised about inconsistencies in BNPL providers' use of Credit Reference Agencies (CRAs) and also how BNPL agreements are reported on consumers' credit files. The government recognises that clear and consistent credit reporting will be an important part of the responsible provision of BNPL products. We therefore intend to work with CRAs and the wider industry to find an appropriate and workable solution to how BNPL may be reported on consumers' credit files.

Question 24: What are your views on the role of creditworthiness assessments as part of a proportionate approach to BNPL regulation?

Question 25: Do you have any views on whether there should be specific requirements for creditworthiness assessments for BNPL agreements?

Question 26: Do you have any views on how BNPL agreements should be reported to consumers' credit files?

Arrears, default and forbearance

3.35 Given that BNPL is unregulated, there are currently no requirements on BNPL providers around how they should treat customers in financial difficulty, nor how they should communicate with borrowers that have missed payments¹⁵. *The Woolard Review* identified concerns around the way in which BNPL providers treat firms in financial difficulties, noting the lack of a consistent approach between providers. This included an absence of clarity for consumers on whether providers charge late payment fees or whether debts could be passed on the debt collection agencies. The review also found that for firms that charge late payment fees, the revenue from such fees can make up a significant portion of the firms' overall revenue¹⁶.

3.36 FCA rules require regulated firms to treat customers in default or in financial difficulties fairly and with forbearance and due consideration, taking into account the circumstances of each individual borrower. The rules include:

- the need for firms to have clear effective and appropriate arrears policies and procedures;
- requirements on firms' treatment of customers in default or arrears;
- requirements for firms to provide information on status of debts;
- rules on pursuing and recovering repayments;
- requirements on how firms contact customers;
- restrictions on unfair business practices in relation to debt;

¹⁵ It is worth noting that where a BNPL provider passes a debt to a debt collection agency, the debt collection agency will be undertaking a regulated activity. As such, it needs to be authorised and regulated by the FCA and will be subject to FCA rules including those on the fair treatment of customers in arrears.

¹⁶ Paragraph 4.45, [The Woolard Review](#)

- requirements that firms do not impose charges on customers in default or arrears difficulties unless the charges are no higher than necessary to cover the reasonable costs of the firm.

3.37 The FCA rules state that examples of treating a customer with forbearance would include the firm doing one or more of the following, as may be relevant in the circumstances:

- considering suspending, reducing, waiving or cancelling any further interest or charges (for example, when a customer provides evidence of financial difficulties and is unable to meet repayments as they fall due or is only able to make token repayments, where in either case the level of debt would continue to rise if interest and charges continue to be applied);
- allowing deferment of payment of arrears where immediate payment of arrears may increase the customer's repayments to an unsustainable level; or provided that doing so does not make the term for the repayments unreasonably excessive;
- accepting token payments for a reasonable period of time in order to allow a customer to recover from an unexpected income shock, from a customer who demonstrates that meeting the customer's existing debts would mean not being able to meet the customer's priority debts or other essential living expenses (such as in relation to a mortgage, rent, council tax, food bills and utility bills).

3.38 Additionally, where a customer is in default or in arrears difficulties, a firm should allow the customer reasonable time and opportunity to repay the debt.

3.39 Discussions with the industry have highlighted that many existing BNPL providers do have hardship policies in place to assist customers that are struggling and are unable to repay. However, consistency across providers on the assistance available is limited and may confuse consumers who are in need of help.

3.40 The government's view at this stage, therefore, is that it would be proportionate that regulation of BNPL would include some requirements around how firms treat customers in financial difficulty. However, as is the case in other areas, it may be that some adaptations are needed to ensure that the objectives for proportionality of the regulation of BNPL are met.

Question 27: Do you have any views about how customers in financial difficulty should be treated under BNPL agreements?

CCA requirement on firms for consumers in financial difficulty

3.41 The CCA also contains requirements for firms in relation to the provision of post-contractual information on arrears and defaults, as well as provision of

information before a lender can take certain action to enforce a term of a regulated credit agreement. A summary of some of these requirements is set out below¹⁷:

- Section 76 requires a firm to give a customer at least seven days' notice before enforcing a term of the agreement, for example by demanding earlier payment.
- Section 86B of the CCA requires the lender, within 14 days of a borrower being at least two payments in arrears under a fixed-sum agreement (or four payments in the case of an agreement under which payments are due at intervals of a week or less), send a notice of sums in arrears (NOSIA) to the borrower. This notice details the specifics of the breach, how it can be remedied, whether additional fees are incurred, the consequences for further inaction, and includes an FCA Information Sheet which includes debt information and sources of free advice. The lender is also obliged to send the customer a subsequent NOSIA at periods not exceeding six months until the customer ceases to be in arrears
- Section 86C of the CCA requires a creditor to give notice to debtor when the debtor has missed two consecutive minimum repayments under a running-account credit agreement.
- Section 86E of the CCA requires firms to give notice to debtors when a default sum has become payable under the agreement.
- Sections 87 and 88 of the CCA impose a requirement on firms to serve a notice on a customer before becoming entitled by reason of breach of an agreement to take actions such as terminating the agreement or demanding earlier payment.
- Section 98 sets out that a firm must give customer at least 7 days' notice before terminating an agreement.

3.42 These requirements in the CCA provide a signal to a customer that an event has occurred which may require the customer to take action, such as missing payments, or giving a warning to a borrower that a firm might take action against them and giving the customer opportunity to respond.

3.43 The rationale behind the requirements is to encourage customers in financial distress to act early to resolve payment difficulties. The form and content of these notices is prescribed in secondary legislation, ensuring that there is consistency across firms.

3.44 Applying these requirements to BNPL could help to address the lack of consistent treatment of customers in financial difficulty identified by *The Woolard Review* as a key source of potential consumer detriment. However, the government would welcome views on the proportionality of such controls.

¹⁷ Sections 86B, 86C, and 86E do not apply to small agreements as defined by section 17 of the CCA. Further details on the government's proposed approach to small agreements for BNPL is found at 3.48.

Question 28: What are your views on the proportionality of applying CCA provisions on arrears and defaults to BNPL agreements?

Section 75

3.45 Section 75 makes a creditor jointly and severally liable in certain circumstances for a supplier's breach of contract or misrepresentations for goods or services. For section 75 to apply, the item or service purchased using the credit must be between £100 and £30000.

3.46 The FCA's review into the retained provisions of the CCA26 noted that:

"There is wide agreement that section 75 provides a strong consumer protection measure that consumers are relatively familiar with, and often use. It can give consumers the confidence to buy from unknown suppliers, or online or from abroad."

3.47 The government is aware that some BNPL providers do currently provide their own buyer protection schemes, but is currently of the view that a statutory protection could apply as part of regulation of BNPL, so that it is in line with other regulated credit agreements.

Question 29: Do you agree that under any regulatory intervention for BNPL, section 75 of the CCA should apply to agreements?

Small agreements

3.48 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.

3.49 Some of the elements of the CCA and CONC which do not apply to small agreements include, but are not limited to:

- Part V of the CCA, which includes provisions relating to pre-contractual negotiations made by or on behalf on 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;
- CONC 5.2A on creditworthiness assessments.

3.50 *The Woolard Review* noted that the average BNPL transaction can be comparatively quite small between £65 and £75. However, the government is conscious that many BNPL agreements will be below £50, and therefore would be classed as a small agreement. This means that some of the CCA protections for consumers which are discussed in this consultation would not apply to many BNPL agreements under any regulatory intervention.

3.51 The government therefore thinks that under the regulation of BNPL it would be necessary to consider narrowing the scope of section 17 of the CCA so that CCA requirements apply to BNPL agreements under £50.

Question 30: What are your views on amending the scope of the exemptions from elements of the CCA for small agreements to include BNPL agreements under £50.

Question 31: Are you aware of any currently-regulated consumer credit products, in particular those which are debtor-creditor-supplier agreements, that are routinely offered with values less than £50?

Financial Ombudsman Service and redress

3.52 The FOS is a free-to-consumer service to help resolve disputes between financial services firms and claims management companies on a fair and reasonable basis as an alternative to the courts. The FOS provides an impartial and independent assessment of a complaint and helps to settle disputes between consumers and firms based on what it believes to be fair and reasonable in the individual circumstances of each case. The FOS is required to take account of: relevant law; regulators' rules, guidance and standards; industry codes; and, where appropriate, good industry practice.

3.53 The government is aware that currently some BNPL providers do provide a complaints process that is separate from their regular customer services team that customers can escalate complaints to. However, this is not truly independent, and there is no standard approach across the industry to provide this.

3.54 The government's view is that proportionate regulation of BNPL should include the ability for consumers to access the FOS for issues concerning the conduct of lenders. This would ensure greater consumer protection in the market and meet the government's objective of ensuring that consumers have access to appropriate dispute resolution mechanisms.

Question 32: Do you agree that under a regulatory intervention for BNPL, consumers should be able to bring a complaint to the FOS?

Chapter 4

Equality Impact assessment

4.1 The government recognises that bringing BNPL into regulation would have impacts on firms offering the product, businesses that offer it as a payment option, as well as the consumers that use it.

4.2 The government's wishes to ensure that any regulatory intervention would be proportionate and would balance the potential risks of the product against the benefits that it provides. The government is in particular seeking to ensure that SME merchants would not be encumbered to the extent that they would be prevented from being able to feasibly continue to offer BNPL or short-term interest-free credit as a payment option.

4.3 When formulating a policy proposal, we are required to comply with the Public Sector Equality Duty (PSED) in the Equality Act 2010¹⁸.

4.4 In particular, when assessing the impact of a proposed measure on persons likely to be affected by that measure, the government will need to have due regard to the following three aims of the PSED, in respect of the protected characteristics outlined below:

- (a) eliminate discrimination harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010; s 149(1)(a) Equality Act 2010;
- (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it: s 149(1)(b) Equality Act 2010;
- (c) foster good relations between persons who share a relevant protected characteristic and those who do not share it: s 149(1)(c) Equality Act 2010.

4.5 The protected characteristics are: 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.

Question 33: What impacts do you expect the regulation of BNPL would have on BNPL providers, consumers that use the product, and merchants that offer it as a payment option?

Question 34: What impacts would you expect to see on persons with the protected characteristics mentioned above as a result of regulation of BNPL?

¹⁸ <https://www.gov.uk/guidance/equality-act-2010-guidance>

Question 35: Do you have any views on how the government can mitigate any disproportionate impacts on protected characteristics?

Chapter 5

Responding to this consultation

5.1 This consultation will open on 18 October for 12 weeks, and close at **11:59pm on 6 January 2022**. The government is seeking views through this consultation to inform the approach to regulation of BNPL.

5.2 Following the consultation, the government will provide a summary of responses and will set out next steps for its work on regulation of BNPL.

Who should respond?

5.3 A range of groups will be interested in the questions and evidence presented. The government welcomes responses from all stakeholders, including:

- consumer groups
- BNPL lenders
- short-term interest-free credit lenders
- other lenders
- businesses, such as retailers, which offer BNPL and short-term interest-free credit

When and how to submit responses

5.4 This consultation will remain open for 12 weeks, and close on 6 January 2022.

5.5 Please submit responses to: buynowpaylater@hmtreasury.gov.uk

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

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

5.7 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)

5.8 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)

5.9 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

5.10 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

5.11 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

5.12 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).

5.13 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).

5.14 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.

5.15 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.

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

5.17 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>

5.18 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)

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

5.20 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)

5.21 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

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

5.23 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

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

Annex A – History of the regulation of consumer credit and the A60F(2) exemption

A.1.1 The Crowther Report on consumer credit, published in 1972, set the foundations for the consumer credit regime which would be implemented by the CCA in 1974. The report noted the differences between deferred payment where there was a separation in time between the delivery of goods or performance of services and payment for them, and where purchases were made using credit with a discrete transaction:

"...within the general field of deferred payment for goods and services, we think there is a practical distinction to be drawn between those cases where there is a simple separation in time between the delivery of goods or the performance of services and the payment for them... and where a formal credit contract is made between buyer and seller regulating the conditions of repayment and the charge to be made for the credit..."

...It is not therefore because they fall outside our terms of reference, but for strictly practical reasons that we have not greatly concerned ourselves with them. For one thing, we have not been made aware of any special problems that arise in this area... Moreover, we have been keenly conscious of the undesirability of trying to impose any form of regulation upon such an enormous number of largely informal transactions, unless it is strictly necessary to do so... No such exclusion can, of course, be made for loans of money (whether or not made for the purchase of specific goods), since the short-term borrower is sometimes in as much need of protection as anyone else."

A.1.2 Accordingly, an exemption was provided for in the Consumer Credit (Exempt Agreements) Order 1977¹⁹, subsequently replaced by the Consumer Credit (Exempt Agreements) Order 1989²⁰, which was designed to ensure that businesses which defer payment for the provision of goods and services were not brought within the scope of consumer credit regulation. Without this exemption, a business providing an invoice for payment at a later date would have needed a licence from the Office of Fair Trading (OFT), and such agreements would have to comply with the requirements of the CCA. In addition to invoicing, other low risk financial agreements which were commonly used at the time, such as accounts held by consumers at department stores, fell within the exemption.

A.1.3 The exemption originally covered agreements for fixed-sum credit under which the total number of payments did not exceed four, and that those payments

¹⁹ [SI 1977/326](#)

²⁰ [SI 1989/869](#)

were required to be made within a period not exceeding 12 months beginning with the date of the agreement.

A.1.4 On 1 April 2014, responsibility for consumer credit regulation was transferred from the OFT to the FCA. As part of that transfer, exemptions in the CCA and associated secondary legislation were subsumed by provisions in the RAO²¹.

A.1.5 The exemption was expanded from four payments to its current 12 in 2015²². This followed the Treasury's commitment in the Insurance Growth Action Plan²³, published in December 2013, to consider the pros and cons of deregulating requirements relating to instalment credit. The purpose of the expansion was to allow customers to pay over a year via monthly instalments rather than being limited to quarterly payments, to ensure that the government's regulatory approach struck the right balance between proportionality and consumer protection.

A.1.6 Stakeholders at the time, including consumer groups and debt charities, were broadly positive about expanding the exemption, in particular noting that it was in the interest of consumers and that the level of risk to consumers was small. However, some stakeholders noted concerns relating to the lack of affordability checks and fewer protections if the consumer defaults.

²¹ [SI 2013/1881](#)

²² [SI 2015/352](#)

²³ https://assets.publishing.service.gov.uk/Government/uploads/system/uploads/attachment_data/file/263148/the_UK_insurance_growth_action_plan.pdf

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