



HM Treasury

# Regulation of Buy-Now Pay-Later

## Response to consultation

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June 2022



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# Executive summary

In February 2021, the government announced its intention to regulate interest-free Buy-Now Pay-Later (BNPL) products following the publication of *The Woolard Review – a review into change and innovation in the unsecured consumer credit market*<sup>1</sup>, which concluded that there are currently a number of areas of potential consumer detriment in the unregulated BNPL market.

The government published a consultation on 21 October 2021 which set out a proposed proportionate approach to regulation. While there are some arrangements often known as 'Buy-Now Pay-Later' that are regulated, the focus of the consultation was unregulated BNPL agreements. The consultation sought stakeholder views on the scope of BNPL regulation, that is what activities should be regulated, as well as the regulatory controls that should be applied to the products. The consultation closed on 6th January 2022.

The government has analysed the responses to the consultation and used them to develop its policy approach. This document sets out the government's response, which is that:

- the scope of regulation should capture BNPL and other currently-exempt agreements (which we refer to as short-term interest-free credit (STIFC)) when they are provided by third-party lenders;
- the government is minded to extend this scope to also capture STIFC provided directly by merchants where it is offered online or at a distance, but further stakeholder engagement is necessary to fully understand the scale of the merchant-offered STIFC market;
- the government will allow exemptions for specific agreements where there is limited risk of potential consumer detriment, and where regulation would otherwise adversely impact day-to-day business activities;
- the government's approach to regulatory controls for agreements that will be brought into regulation will tailor the application of the Consumer Credit Act 1974 (CCA) to these products, and the elements of lending practice most linked to potential consumer detriment.

Following the publication of this response, the government will engage with stakeholders to enable a final decision as to whether the scope of regulation should be extended to include STIFC provided directly by merchants online or

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<sup>1</sup> <https://www.fca.org.uk/publication/corporate/woolard-review-report.pdf>

at a distance. Chapter 2, paragraphs 2.30-2.38, sets out more information and seeks stakeholder views on the proportionality of this approach. The government also aims to publish a second consultation to seek views on the detail of draft legislation by the end of the year.

# Chapter 1

## Introduction

- 1.1 The Woolard Review concluded that there are currently a number of areas of potential consumer detriment in the unregulated interest-free BNPL market. These areas included the inappropriate promotion of BNPL to consumers, poor consumer understanding of the product, lack of affordability assessments and visibility of these products on credit files, and inconsistent treatment of customers in financial difficulty. Noting these areas of potential consumer detriment, the government announced its intention to bring these products into the scope of regulation in February 2021, in order to prevent this potential consumer detriment from crystallising.
- 1.2 Interest-free BNPL products are a type of instalment credit, allowing borrowers to split the cost of purchases into regular repayments. Unregulated BNPL agreements do not have the same level of consumer protection as regulated credit agreements since firms offering them do not need to be authorised and regulated by the Financial Conduct Authority (FCA), nor do firms have to comply with the requirements of the CCA.
- 1.3 The legislative exemption which BNPL providers use also captures other types of interest-free lending, which the consultation referred to as STIFC, as well as day-to-day business activities such as invoicing. In its consultation, the government made the following distinction between BNPL and STIFC:
  - BNPL - usually taken out online with consumers 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. These are a more traditional form of credit, which has operated for many years without raising significant concerns.
- 1.4 The government published a consultation on 21 October 2021 which set out a proposed proportionate approach to regulation. The government's approach looked to ensure that consumers are given appropriate protections without unduly limiting the availability and cost of useful financial products. The consultation set out that proportionality would be achieved by:
  - ensuring that the scope of the new regulation is defined as closely as possible to target those products where there is potential for consumer detriment, with the government minded to focus the scope of regulation to BNPL only; 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.
- 1.5 The government has fully considered the responses to the consultation and further developed its approach to the regulation of these products. This document sets out the government's response.
- 1.6 The government received 86 responses to the consultation from BNPL lenders, STIFC providers, firms from the wider consumer credit and payment industries, credit reference agencies, merchants, trade associations, consumer groups, debt advice charities, law firms, academics, an MP and individual members of the public. A list of the non-confidential respondents can be found at Annex A.
- 1.7 Following the publication of the consultation, the government undertook a period of engagement with a diverse range of stakeholders, including trade associations for the financial services and retail sectors, consumer groups and debt charities, as well as individual consumer credit firms.
- 1.8 The government would like to thank all respondents for taking the time to respond to the consultation and for sharing their views.

## **Consultation response structure**

- 1.9 The consultation response has three sections:
- Chapter 2 sets out feedback from consultation responses on the scope of regulation and the government's preferred policy position, as well as asking for further stakeholder views;
  - Chapter 3 sets out consultees' views on the proposed regulatory controls that were outlined in the consultation, and confirms the government's policy position;
  - Chapter 4 provides more information on next steps.

# Chapter 2

## The scope of regulation

- 2.1 As set out in the consultation, the government considers it important that the scope of regulation should be proportionate, so that it targets the products with the potential for consumer detriment but does not impede the provision of useful financial products.
- 2.2 The government has been clear in its intention to regulate BNPL, given The Woolard Review and research from consumer groups have demonstrated the need for intervention to prevent consumer detriment from crystallising.
- 2.3 BNPL currently utilises the exemption in article 60F(2) of the Financial Services and Markets Act 2000 (Regulated Activities Order) 2001 (RAO)<sup>1</sup> which many other types of formal credit agreement and informal financial arrangement fall into, including the arrangements which we referred to in the consultation as STIFC.
- 2.4 The consultation outlined that the government was minded to focus the scope of regulation on BNPL only. However, the government recognised the limited visibility it had of the wider use of the exemption and the practical difficulties of drawing a distinction between different types of lending which rely on the article 60F(2) exemption.
- 2.5 The consultation set out the following as the most prominent types of interest-free lending and financial arrangement which utilise the article 60F(2) exemption and their key features as the government understood them at the time:
- BNPL - usually taken out online with consumers 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. The government thought it might also be used to finance subscriptions such as gym and club memberships, or for season tickets.

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<sup>1</sup> 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.

- Invoicing - which permits a customer to pay for goods or services at a date later than the date of delivery or use, but is distinct from what is generally perceived as a credit agreement.
- 2.6 The consultation also set out the need to futureproof regulation to ensure it accounted for potential developments in the market, to prevent firms circumventing regulation through changes to their business models. This included consideration of article 60F(3) of the RAO<sup>2</sup>, which provides an exemption from regulation for certain types of interest-free running account credit (and is most commonly currently used by charge cards).
- 2.7 The consultation sought to test the government's view that regulation should be limited to BNPL products only, given that there was little evidence of detriment arising from STIFC, which is long established, and that capturing invoicing would severely impact day-to-day business activities.
- 2.8 Given the limited information available on agreements which use the article 60F(2) exemption, the consultation sought stakeholder views to test the:
- government's understanding of the use of the exemption, including the features and extent of lending which utilises this exemption;
  - potential for consumer detriment to arise from different products and market developments; and
  - implications of the proposed scope of regulation, including whether and how a distinction between BNPL and STIFC should be made given the practical challenges in making this distinction.
  - This chapter sets out a summary of the consultation responses in these key areas and sets out the government's intended position on scope.

## Understanding article 60F lending

- 2.9 Respondents broadly agreed with the government's understanding of the types of lending utilising the article 60F(2) exemption but considered that the specific nature of BNPL and STIFC were rapidly changing. Overall, stakeholders were more confident in their assessments of the BNPL market than the STIFC market.
- 2.10 There were no firm views among consultees on how widely STIFC is currently provided directly by merchants themselves, or how many firms - whether third-party lenders or merchants - are active in the market. Respondents who commented on this market indicated that STIFC is highly likely to be provided by third-party lenders, of which there are a small number of well-established firms, which tended to be FCA authorised and offer regulated credit products alongside their exempt lending. As a result, those providers

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<sup>2</sup> 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 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 charges.

were likely to apply the same standards and procedures to their unregulated STIFC as they do to their regulated products due to having standardised internal systems, and due to requirements imposed by lenders' funding strategies<sup>3</sup>.

2.11 Many respondents pointed to changes in business models in the BNPL and STIFC markets. Of note are developments that blur the distinction which the government made in the consultation between BNPL and STIFC. These developments included:

- BNPL providers offering higher value agreements that were more typically a feature of STIFC agreements;
- Greater use of BNPL in-person, rather than the online e-commerce setting which the government had considered a key feature of BNPL, and conversely STIFC providers increasingly lending more online rather than in-store; and
- STIFC and BNPL agreements being increasingly used to finance similar types of goods and services and potentially offered to consumers alongside each other at checkout.

2.12 The majority of consultation responses agreed with the government's assessment that BNPL products posed a number of potential risks to consumer detriment. Many responses provided further detail from recent reports and analysis from consumer groups to reinforce the risks which were set out in The Woolard Review and summarised in the consultation. Key areas of focus for respondents were:

- Affordability - many respondents pointed toward the lack of requirements for BNPL providers to undertake creditworthiness assessments, the ease of taking out multiple agreements from different lenders, and the lack of visibility on credit files which impacts on other lenders' abilities to undertake their own creditworthiness assessments.
- Consumer understanding - debt advice providers particularly highlighted the risk that their clients tend not to view BNPL as credit.
- Advertising and promotion - some responses also focused on the risks in the promotion of BNPL, including the role of merchants in the transaction and the extent to which they followed marketing guidance provided by lenders.

2.13 In addition to the potential sources of detriment outlined in the consultation, some respondents identified the following as potential sources of detriment for BNPL:

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<sup>3</sup> Many lenders' funding strategies involve selling or securitising their loan books. The government's understanding is that third-party STIFC providers tend to sell or securitise their entire loan books, incorporating regulated and article 60F(2) agreements. To manage risk, funders typically expect that the entirety of loan books will have been subject to appropriate creditworthiness and affordability assessments, and therefore third-party STIFC providers apply similar risk controls to their article 60F(2) lending as their regulated agreements.

- the lack of protections that apply to regulated products such as section 75 CCA<sup>4</sup> coverage or the ability to make a complaint to the Financial Ombudsman Service (FOS);
  - providers' use of default fees, and the potential disproportionality between the size of the fee and the amount borrowed.
- 2.14 Respondents generally agreed with the government's view set out in the consultation that STIFC appears to have some of the same potential risks for consumer detriment as BNPL. Many consultees considered that the increased blurring between STIFC and BNPL products, both in their features and real-world usage, indicated that the potential drivers of detriment are increasingly similar.
- 2.15 Some respondents noted that STIFC is increasingly offered online. They considered this a key driver of potential detriment given the lowered friction in online e-commerce transactions, which has been cited as a core risk for BNPL products in The Woolard Review and elsewhere.
- 2.16 Many also set out that despite the increasing similarity between BNPL and STIFC, with corresponding risks of consumer detriment, there was currently limited evidence of detriment from STIFC crystallising. Notably, debt advice providers reported that they did not generally come across clients who appeared to have extensive problems with it.
- 2.17 However, some responses noted that the lack of public evidence should not be taken as an indicator that problems do not exist. These responses also pointed to recent shifts in consumer behaviour suggesting that STIFC may well require regulation to pre-emptively tackle the same type of detriment seen in the BNPL market.
- 2.18 Consultees had mixed views on whether the key features of STIFC products (as set out at paragraph 2.5 above) would likely reduce or exacerbate the potential for detriment. However, others commented that attempting to determine this is irrelevant given the increasing similarity between STIFC and BNPL.
- 2.19 A small number of responses made a distinction between STIFC provided by a third-party lender and STIFC provided directly by merchants. Some considered that the fact that the merchant carried the credit risk in the latter model meant the merchant had an increased incentive to manage their brand, lend responsibly and ensure a borrower could repay. However, others considered that without the use of a third-party there was greater potential for a conflict of interest between the merchant and consumer, through the merchant offering credit to drive sales at the expense of ensuring that an agreement is affordable.
- 2.20 Stakeholders were in broad agreement with the government's assessment that invoicing presented little risk of detriment. Some responses thought it beneficial to continue to exempt agreements which financed season tickets

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<sup>4</sup> 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 £30,000.

or other subscription-like agreements, such as gym or sports club memberships. Other respondents considered that some forms of interest-free lending made directly between an employer and an employee (e.g. some types of cycle to work schemes) may also fall into the article 60F(2) exemption and require consideration.

- 2.21 Respondents broadly agreed that changes to the article 60F(3) exemption for running- account credit would need to be considered to prevent BNPL lenders adopting a running-account model solely to circumvent regulation. However, some questioned how useful it would be to the existing BNPL business model: given that the article 60F(3) exemption requires the full outstanding balance to be cleared in a single repayment and lenders would be extremely limited in how much flexibility they could apply to borrowers' repayments made under the agreement.

## Drawing the scope of regulation

- 2.22 The consultation had set out two possible ways for a distinction to be drawn between BNPL and STIFC in regulation, if evidence from stakeholders concluded that a distinction should in fact be made. These were:

- 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 may then agree to finance one or more transactions but where any repayments are toward specific agreements made as part of that relationship.

- 2.23 Consultation responses revealed challenges with both approaches:

- Whilst some responses agreed it was logical to draw a distinction according to whether a third-party lender was present in the transaction, many respondents from both consumer groups and the lending industry noted the potential for large e-commerce retailers to begin offering their own credit themselves in the future and at scale, without relying on third-party lenders. If this approach to regulation were taken and this risk crystallised, then those large e-commerce merchants might continue to provide interest-free credit akin to BNPL outside the scope of regulation, and as a result the potential harm to consumers arising from that form of credit would remain.
- On defining a BNPL agreement as one where there is a pre-existing, overarching relationship between the lender and the borrower, responses raised concerns about what such a relationship meant in practice and how it could be set out in legislation, in addition to the risk that such an approach might allow BNPL lenders to change their business models to avoid regulation.

- 2.24 Consultees also suggested further potential ways to make a distinction between BNPL and STIFC based on the features of the products which the government had defined in the consultation. These included:
- the value of transactions financed, aligning with the government's initial view that BNPL agreements tended to be of a lower value than STIFC;
  - the types of goods or services purchased, to enable exempt agreements financing subscriptions or season tickets to remain outside the scope of regulation;
  - the presence of point-of-sale infrastructure for its use, to capture activities where there was greater risk of consumers entering agreements without thorough consideration; or
  - whether lending was part of an e-commerce transaction, where there has been greatest concern about the lack of friction driving indebtedness.
- 2.25 Many respondents also challenged the government's initial view that regulation should be limited only to BNPL products, and considered it necessary to regulate STIFC as well as BNPL given the increasing similarity of the features and usage of products which are set out above. The reasons provided can be broadly grouped into the following categories:
- Applying similar consumer protections to similar potential risks - Respondents noted that given the risks from STIFC and BNPL were broadly the same, regulation should follow the principle of the same regulation being applied to products that carry the same risk. Some responses also highlighted potentially paradoxical outcomes arising from making a distinction between BNPL and STIFC, such as regulatory protections being afforded to consumers for lower-value BNPL purchases but not for higher-value STIFC agreements.
  - Futureproofing against developments in the market - Many respondents cited discrete examples that demonstrated the risk of current business models evolving further, and the increased potential for STIFC to lead to the same type of detriment as BNPL. This included:
    - large e-commerce merchants with the ability to provide STIFC directly without a third-party lender and at scale, as set out above;
    - high-risk merchant-provided deferred payment credit targeted towards low-income consumers; and
    - BNPL lenders synthetically structuring transactions so a lender purchases goods immediately from the merchant, legally becoming the seller of the goods itself.
  - Aiding customer understanding - There were additional concerns around confusion for consumers about the protections that would be available to them where products with materially similar features but different regulatory statuses were offered alongside each other.
- 2.26 Whilst many respondents considered regulation of STIFC would be necessary, stakeholders did not think that regulation would place disproportionate

burdens on third-party STIFC lenders. Further, most industry stakeholders did not think that regulation would materially impact the provision of STIFC given that it is most often provided by a small population of third-party lenders, many of which are already FCA authorised and tend to offer currently-exempt agreements in a way that is aligned with their regulated product offerings.

- 2.27 There was limited awareness among respondents of merchants that may provide STIFC directly. In light of this few stakeholders commented on the impact regulation could have on this form of lending. Stakeholder engagement carried out alongside the consultation indicated that there may be a tail of small and medium sized enterprises (SMEs) offering this form of credit themselves as an ancillary activity to their main business. A few stakeholders considered it likely that merchants providing credit directly could be a result of outdated business models. As a result of the availability and ease of third-party provision, these stakeholders thought that merchants providing STIFC directly would switch to partnering with a third-party lender rather than stop offering credit as a payment option altogether if they were brought within the scope of regulation.
- 2.28 Most respondents were clear that invoicing should remain exempt from regulation given that there was little evidence of consumer detriment and regulation would be highly disproportionate and disruptive for day-to-day business activity.
- 2.29 The consultation also set out the government's view that other types of article 60F lending should remain exempt, which included agreements financing insurance contracts and charge cards. Responses generally agreed that these types of agreement should remain out of scope of regulation.

## Government response

### Regulation of STIFC

- 2.30 The government's view following careful analysis of consultation responses is that the scope of regulation should be expanded beyond the BNPL-only scope proposed in the consultation. Consultation responses pointed to three compelling reasons (set out in paragraph 2.11) in favour of a wider scope to incorporate the majority of STIFC:
- The increasing similarities in the key features and real-world usage of BNPL and STIFC demonstrates the need for consistent protections for products with the potential to be offered alongside each other.
  - The potential future development of STIFC and BNPL markets further blurs the boundaries between these products. Regulation needs to pre-empt likely developments and ensure that it is not possible for BNPL firms to make artificial changes to their business models solely to avoid regulation.
  - The diminishing distinction between BNPL and STIFC increases the need for consumer clarity on the rights and protections they can expect. This is



important given that lack of consumer understanding is cited as a particular driver of detriment for BNPL.

- 2.31 The government is confident, on the basis of the consultation responses, that bringing STIFC provided by third-party lenders into regulation is proportionate given that the known small population of third-party providers is largely already authorised for the provision of regulated credit agreements, and tends to treat their unregulated lending in a similar fashion to their regulated offering.
- 2.32 However, the government currently has a limited sight of the scale and nature of the merchant-provided STIFC market. While evidence from the consultation suggests that merchants are much more likely to partner with third-party lenders than offer credit themselves, there remains uncertainty about the potential population of merchants, particularly smaller businesses, who may be caught by regulation. For example, providers who offer their own interest-free financing for sports memberships, educational courses and season tickets. This means that the government is approaching the extension of regulation to merchant-provided STIFC with more caution.
- 2.33 The government intends that the scope of regulation will capture BNPL as well as STIFC agreements when they are provided by a third-party lender. The government assesses these agreements as posing similar risks of consumer detriment and is confident that regulation will not be overly burdensome or significantly impact the provision of interest-free credit.
- 2.34 The government is also minded to extend the scope of regulation to capture STIFC agreements which are provided directly by merchants online or at a distance, given their potential to present the same risks as BNPL agreements and STIFC agreements provided by a third-party lender. This would also ensure that agreements offered directly by large e-commerce merchants would be regulated, and would also mitigate the risk of BNPL providers avoiding regulation by structuring agreements so that they technically become the merchant in the transaction they are financing.
- 2.35 The government's view is that, to the limited extent that we understand STIFC is provided directly by a merchant in-person in-store, such transactions do not carry the same level of risk as agreements provided directly by merchants online or at a distance. This is because the greater friction that is present during in-person transactions reduces the risks 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.
- 2.36 To enable a final decision to be made about the inclusion of merchant-provided STIFC, provided online or at a distance, **the government is undertaking further stakeholder engagement to further develop its understanding of this part of the market (set out in paragraphs 2.15, 2.19 and 2.27). The government welcomes additional insight from stakeholders on:**

- **Scale** - including the potential number of merchants providing STIFC themselves, both in-person or online or at a distance, and the types of sectors they operate in; and
- **Operation** - including the way in which merchants administer and manage the provision of STIFC.

Stakeholders are invited to provide further information to [buynowpaylater@hmtreasury.gov.uk](mailto:buynowpaylater@hmtreasury.gov.uk) by Monday 1 August.

- 2.37 Comment is particularly welcome in relation to the sectors in which responses to date indicate such credit may be offered, such as dentistry, healthcare, education, home improvements and maintenance, sports clubs, vehicle repair and potentially SME retailers.
- 2.38 Following this stakeholder engagement period, the government will make a final decision as to the extension of scope to credit provided directly by merchants online or at a distance and develop secondary legislation. The government will set out its final position alongside a consultation on the draft legislation, which the government aims to publish around the end of the year.

## Anti-avoidance measures

- 2.39 Should the government decide that it would be disproportionate to regulate STIFC provided directly by merchants online or at a distance, the government will consider whether BNPL lenders would be able to synthetically structure transactions to circumvent regulation. Depending on the final position on scope, the government will consider including anti-avoidance measures in legislation to mitigate this risk.
- 2.40 The government also remains concerned about the potential for BNPL providers adopting a running-account model and utilising the article 60F(3) exemption in order to circumvent regulation, while still offering products that present the same potential consumer harm as BNPL. The government will consider whether a legislative change is needed in relation to this exemption so that BNPL providers cannot take advantage of it. The government notes that providers of charge cards currently make use of this exemption, but intends to keep these products exempt, as set out below.

## Regulatory exemptions

- 2.41 Consultation responses confirmed the government's view that some arrangements that currently fall within the article 60F(2) and 60F(3) exemptions do not present a substantive risk of consumer detriment, and regulation is likely to hamper day-to-day lending and the provision of useful forms of credit.
- 2.42 The government therefore proposes to ensure that, when it brings BNPL into regulation, the following types of arrangement will continue to be exempt from regulation.

- **Invoicing** - the government has not seen any evidence of consumer detriment from a simple deferred payment offered by a merchant to a consumer and assesses that regulating these types of transactions would be highly disproportionate and disruptive for day-to-day business activities. The government therefore intends to exempt arrangements 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.
- **Interest-free agreements which finance contracts of insurance** - the article 60F(2) exemption allows insurers to offer payment for annual insurance policies in monthly instalments, making it easier and more affordable for consumers to pay for their insurance. This is particularly important where holding a valid insurance policy is a legal requirement, such as for motor vehicles. If these agreements were regulated, there is a risk that access to insurance would be restricted for lower income consumers.
- **Charge cards** - consultation responses did not identify any consumer detriment, potential or realised, arising from charge cards, which currently use the article 60F(3) exemption. The government therefore intends to maintain an exemption for these products.
- **Trade credit** - the government considers that it would be highly disproportionate and disruptive to regulate agreements, that are currently exempt, under which suppliers provide flexibility to small businesses to defer payment for goods until they are paid by their customers.
- **Employer/employee lending** - the government's view is that most interest-free credit agreements made directly between an employer and employee are likely exempt under article 60G of the RAO. However, consultation responses highlighted similar arrangements which are facilitated by third-party lenders, which are likely to make use of the article 60F(2) exemption. To ensure consistent treatment of similar agreements for similar purposes, the government's view is that agreements offered by a third-party lender but facilitated by an employer should also remain exempt from regulation.

# Chapter 3

## Proportionate regulatory controls

- 3.1 The consultation set out the government's view that while there is evidence of potential consumer detriment, BNPL products are inherently lower risk than interest-bearing credit products, and that they can be a useful tool for consumers to manage their finances when used appropriately. The government's position, therefore, remains that it is important that the regulatory controls applied to agreements which are brought into regulation are proportionate to the risk they present, whilst also providing sufficient consumer protection.
- 3.2 Therefore, in the consultation the government sought stakeholder feedback on the nature of the regulatory controls that are proposed to be put in place when BNPL products are brought into regulation. Key components of the government's proposals were:
- Exempting from FCA regulation as credit brokers merchants which offer BNPL from a third-party lender as a payment option;
  - Ensuring that advertising and promotions of BNPL agreements fall within the financial promotions regime;
  - Disapplying certain provisions in the CCA, particularly relating to the provision of information to consumers; and
  - Applying provisions in the FCA's Handbook and expanding FOS jurisdiction to cover BNPL agreements.
- 3.3 Overall, respondents broadly agreed with this approach. However, some industry stakeholders challenged the premise that BNPL is lower-risk purely due to its interest-free nature, and questioned whether tailored controls would impact wider competition in the consumer credit market.
- 3.4 Many industry stakeholders also used their responses to make the case for broader reform of the regulatory controls provided by the CCA that apply to all regulated credit agreements. Some respondents considered that a tailored approach to BNPL could be a test case for wider reform of CCA requirements. However, others felt that the existing CCA requirements should be applied in full to BNPL with reform coming later, or that the government should undertake broader reform in parallel.
- 3.5 Whilst the government recognises industry concerns about the potential impact on competition, it considers that the tailored approach set out in the consultation strikes the right balance between consumer protection and proportionate burdens on firms. The government considers that its approach

could instead increase competition, by setting a more flexible framework in which further innovative products could be developed.

- 3.6 On stakeholders' views about broader consumer credit reform, the government is committed to ensuring that consumer credit regulation provides high-standards of consumer protection, is fit-for-purpose in the current credit market and is proportionate. Recognising that the current regulatory framework for consumer credit is built around a dated model of regulation established by the CCA, the government has announced its intention to progress ambitious reform of the CCA and has committed to a first public consultation on this later this year<sup>5</sup>. Given that reform of the CCA will be complex and lengthy the government intends to progress BNPL regulation, and utilise the understanding gained from this intervention in considering broader reform.
- 3.7 This chapter summarises the responses to the consultation and the government's position on each of the regulatory controls that will apply to agreements that will be brought into regulation.

## Credit broking

- 3.8 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.
- 3.9 Without providing a legislative exemption, merchants who broker credit agreements that are brought into regulation would likely be credit broking and would need to apply to the FCA for authorisation and comply with relevant regulation.
- 3.10 The government's view, set out in consultation, was that bringing merchants which offer BNPL agreements as a payment option into the scope of credit broking regulation would not be proportionate to the potential risk of consumer detriment arising. The government expected that doing so would impose significant costs on retailers and was concerned that this may result in merchants ceasing to offer interest-free credit options.
- 3.11 The consultation also set out that limited exceptions to this exemption may be necessary. For example, under the regulatory regime for regulated credit broking, merchants that offer to sell goods or services when visiting customers in their homes ('domestic premises suppliers') are not eligible for the FCA's limited permission regime given the particular risks of pressure selling that exist in that context. The government thought it may be necessary to take a similar approach for domestic premises suppliers that broker BNPL agreements.
- 3.12 Most responses generally agreed that regulating merchants - offering BNPL products, of third-party lenders, as a payment option - as credit brokers would be disproportionate to the level of risk, and overly burdensome.

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<sup>5</sup> <https://www.gov.uk/government/news/uk-commits-to-reform-of-the-consumer-credit-act>

Responses also broadly agreed that limited exceptions, such as for domestic premise suppliers, should apply.

- 3.13 However, some responses from the wider credit industry emphasised that merchants offering BNPL products of third-party lenders should be subject to credit broking regulation, as not doing so would create a gap in compliance costs between BNPL brokers, and brokers of other regulated credit products. Merchants may therefore only offer BNPL and STIFC products as a payment option to avoid regulation, which could distort competition and limit consumer choice. Some respondents also proposed implementing an Appointed Representatives (AR) regime, which they considered would mean merchants would adhere to a minimum level of compliance, whilst ensuring adequate consumer protection.

## Government response

- 3.14 The government intends to exempt merchants offering agreements which are brought into regulation as a payment option from credit broking regulation. The government also intends to provide a limited exception for domestic premises suppliers, so that they will require FCA authorisation. This emulates the current regulatory treatment of domestic premises suppliers, who are subject to the FCA's full permissions regime.
- 3.15 The government's view is that there is minimal risk of brokers pushing consumers to products unsuitable for their needs for BNPL and STIFC products because, unlike most regulated products, merchants do not receive a commission for brokering BNPL and STIFC agreements and instead pay a fee to the lender to provide the credit. Merchants' incentives are therefore different to those offering interest-bearing agreements, as they are limited to driving sales of their product, rather than profiting from the provision of credit itself.
- 3.16 The government assesses that any potential risks to consumer detriment arising from merchants can be mitigated by other interventions and existing protections that will apply when BNPL and STIFC becomes regulated, including those set out in sections below covering financial promotions and application of the CCA.
- 3.17 The government considers that an AR regime would be unsuitable as the relatively small proportion of BNPL and STIFC providers would be unable to effectively supervise the activities of the disproportionately large number of merchants offering their products. The FCA's proposed changes to the AR regime would also further increase the responsibilities of BNPL and STIFC firms.

## Advertising and promotions

- 3.18 The consultation set out that there are some existing requirements on BNPL lenders and merchants regarding advertising and promotions, 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)

and asked whether these requirements would be sufficient to prevent consumer detriment.

- 3.19 The government proposed that these consumer protections could be strengthened further by amending the relevant legislation so that all promotions of BNPL agreements fall within the financial promotions regime.
- 3.20 Most responses broadly agreed that the financial promotions regime should apply, to increase consumer protection and ensure consistency in the standards of advertisements and promotions across the market. However, a small number of responses noted that BNPL providers should not be able to approve promotions of their own product, and a few suggested a simpler financial promotions regime could be more appropriate to reflect both the interest-free and digital nature of the product.
- 3.21 Respondents also suggested that the order of payment options presented at checkouts should be regulated - the option to pay using BNPL products should not be given prominence over traditional debit cards.

## Government response

- 3.22 As set out in the consultation, the government's view remains that the financial promotions regime should apply to merchants offering BNPL and STIFC products as payment options. This would involve amending the relevant legislation so that all promotions of BNPL and STIFC agreements also fall within the financial promotions regime. In practice, this means merchants will 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).
- 3.23 The FCA will consult on its proposals for rules on financial promotions for BNPL and STIFC agreements in due course, including cost benefit analysis.

## Pre-contractual information

- 3.24 The consultation set out the government's view that the full extent of CCA-mandated pre-contractual information, when coupled with the requirements in FCA rules, may not be appropriate for BNPL agreements. Instead, the government considered that requirements for pre-contractual information could rely solely on FCA rules on pre-contract disclosure and adequate explanations, and the detailed requirements for information disclosure in regulations made under section 55 of the CCA could be disapplied.
- 3.25 Many responses agreed with the proposed approach to pre-contractual information, including consumer groups and BNPL providers. Both BNPL providers and some consumer groups emphasised the need for FCA rules on pre-contractual information to be amended to take into account the features of BNPL.
- 3.26 Broadly, the wider consumer credit industry disagreed with the proposals, and argued that section 55 should apply to BNPL agreements in the normal way. Concerns centred around creating an unlevel playing field should BNPL be subject to a different set of requirements than other regulated

agreements. Responses noted that the concerns with section 55, such as the inflexible form and content, are applicable to all regulated products, and that providers of regulated products have had to work within the current framework to find solutions. There were also concerns that a tailored, rules-based approach to pre-contractual disclosure for BNPL would have an adverse effect on competition. Responses also noted that the standardised form of information required by section 55 enabled consumers to more easily compare different products to decide whether they were appropriate for their circumstances.

- 3.27 A key theme that emerged in responses which both agreed and disagreed with the proposed approach to pre-contractual information was the need for broader reform of the CCA. Responses from the wider industry thought that a better approach would see either the government apply CCA requirements to BNPL, with broader reform coming later, or for the government to undertake broader reform in parallel to bringing BNPL into regulation.
- 3.28 Some responses suggested that FCA rules should mandate that additional information should be provided clearly in pre-contractual information, to replace any important elements lost from the disapplication of s55. This included:
- the fact that BNPL is credit;
  - the interest rate (if applicable);
  - any late fees that may be charged;
  - the ability to take a complaint to the FOS; and,
  - the consequences of any failure to make repayments.

## Government response

- 3.29 The government's view remains that disapplication of CCA pre-contractual provisions and reliance on FCA rules remains proportionate for the article 60F(2) agreements that will be brought into regulation, given the level of risk associated with these agreements. The government 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.
- 3.30 Given the government's understanding that third-party STIFC providers are currently likely to treat their current exempt lending as though it were regulated, the government is particularly keen to ensure transitioning to a rules-based pre-contractual approach would not impose undue burdens on them. The government will therefore consider how to ensure that agreements will be compliant and properly executed should a lender choose to apply the existing CCA requirements for currently-regulated agreements to the article 60F(2) agreements which will be brought into regulation.
- 3.31 The government recognises the concerns of the wider lending industry about the need for broader CCA reform and, as set out in paragraph 3.6 has recently committed to work to progress this. Consideration of the



information requirements in the CCA will form a key part of this review, on which the government will seek further stakeholder views.

## **Form and content of the credit agreement**

- 3.32** The consultation sought feedback on the government's view that CCA requirements which prescribe the form and content of regulated agreements may be inappropriate for BNPL agreements and that bespoke legislation on the form and content may be necessary to suit the features of BNPL products and how they are used by consumers in practice. The government also asked for respondents' views on what form agreements for BNPL should take, and what they should contain.
- 3.33** Consumer groups broadly agreed with the proposal for bespoke legislative requirements on the form and content of agreements. One group considered that any draft requirements would require consumer testing, to ensure that the information had maximum impact and engagement.
- 3.34** Some responses, particularly from BNPL lenders but also one from a STIFC provider, agreed with a bespoke approach, but thought that an FCA rules-based approach would be more appropriate than a legislation-based one. These responses tended to favour flexibility in how information should be set out in the agreements, with regulation seeking to ensure that BNPL providers set out the key terms of the loan (for example the total amount, term length, due dates, payment amounts).
- 3.35** As was the case for pre-contractual information, responses from the wider consumer credit industry tended to disagree with the proposals for a tailored approach to the form and content of BNPL agreements, again setting out concerns about the impact on competition. Most considered that the existing CCA requirements should apply to BNPL agreements, and that they should be reviewed and amended as part of broader consumer credit reform.
- 3.36** Responses also provided a number of suggestions on the content of bespoke requirements. These included:
- a description of the nature of the agreement;
  - the purpose of the loan;
  - the parties involved;
  - general terms and conditions;
  - withdrawal rights;
  - the cost of the credit;
  - the term of the agreement;
  - the instalments, including a comparison of potential different instalment terms and the cash price;
  - the potential consequences of missed payments, including any late or default charges and the potential credit file implications;

- key risks of the product;
- rights of complaint and redress;
- whether the debt can be passed on or sold for collection to debt collection agencies;
- signposting to sources of debt advice.

## Government response

- 3.37 The government's view is that it remains appropriate for the requirements on the form and content of agreements to be prescribed in legislation, but that there should be a tailored approach given the lower risk involved in BNPL and STIFC agreements and how they tend to be used.
- 3.38 The government considers that the requirement for agreements to be in a prescribed form with prescribed content introduces 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.
- 3.39 The government therefore intends to prescribe the form and content of BNPL and STIFC agreements in secondary legislation made under the CCA. The government will carefully consider what form and content agreements should contain, and further engage with stakeholders on these requirements.
- 3.40 As with the approach to pre-contractual information, given the government's understanding that third-party STIFC providers are currently likely to treat their current exempt lending as though it were regulated, the government will consider how to ensure that agreements will be compliant and properly executed should a lender choose to apply the existing CCA requirements on form and content of agreements.

## Improper execution

- 3.41 In the consultation the government proposed that the improper execution provisions in section 61 of the CCA should apply to BNPL agreements in the same way as it does to other regulated credit agreements. Section 61 provides 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 manner. The consequence of an agreement not being properly executed is that it becomes unenforceable by the lender unless the lender obtains a court order.
- 3.42 Broadly, respondents agreed with the application of provisions relating to improper execution, agreeing with the government's view that the sanction of unenforceability incentivised compliance with the requirements to provide an agreement in the correct form and containing the prescribed content.

Notably, two BNPL providers agreed with the proposed application of section 61.

- 3.43 Of the responses that disagreed, most came from BNPL providers. Concerns centred around the proportionality of applying the sanction of unenforceability to the typical low value of BNPL agreements. Some responses raised concerns about the possible impact of redress claims stemming from minor breaches of form and content requirements, for example wording errors which have little material impact on consumers.

### Government response

- 3.44 The government's view is that retaining the improper execution provisions for BNPL and STIFC agreements that are brought into regulation is proportionate. Whilst the government will impose a bespoke approach to some elements of the CCA regime, the government does not believe there is compelling evidence to warrant an alternative approach for the improper execution provisions. Consideration of improper execution provisions for all credit agreements will form part of work to reform the CCA.
- 3.45 The government therefore intends that the section 61 CCA requirements on improper execution will apply in relation to BNPL and STIFC agreements that are brought into regulation.

### Creditworthiness and credit files

- 3.46 The consultation asked whether there should be specific requirements for creditworthiness assessments for BNPL agreements, and how BNPL agreements should be reported on credit files.
- 3.47 Almost all respondents emphasised the importance of creditworthiness assessments and agreed that the FCA's rules should apply, noting that they are flexible enough to accommodate a wide range of products and approaches.
- 3.48 Respondents also broadly agreed that BNPL products should be reported on credit files, to mitigate consumer detriment and ensure lenders have full visibility of BNPL agreements to accurately conduct creditworthiness assessments.
- 3.49 Some respondents noted challenges with reporting BNPL on credit files such as the need for real-time data sharing in ensuring BNPL agreements are effectively reported, and the role of Open Banking within that.

### Government response

- 3.50 The government considers that proportionate regulation of agreements that are brought into regulation includes the application of the FCA's current rules on creditworthiness assessments and that it is for the FCA to decide if the rules need to be tailored for these products.
- 3.51 For all regulated agreements, there are no specific regulatory obligations for firms on how they use or report information on consumers and their credit

agreements, or how it is used by credit reference agencies. However, the government's view is that clear, consistent and timely credit reporting across the three main credit reference agencies will be an important part of the responsible provision of BNPL products.

- 3.52 The government is engaging with the credit reference agencies as they develop their approach to reporting BNPL on credit files. In parallel, the FCA is undertaking its cross-market Credit Information Market Study, which, amongst other issues, will consider the impact that the growth in different and new forms of credit could have on credit information, and technological changes in the credit information market such as Open Banking. The FCA intends to publish an interim report on its findings in summer 2022.

## Arrears, default and forbearance

- 3.53 The consultation set out the government's view that it would be proportionate for regulation of BNPL to apply some requirements in FCA rules around the treatment of customers in default and arrears. The government also thought that the CCA's requirements 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, 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.
- 3.54 The overwhelming majority of responses agreed with there being a need for a consistent approach to the treatment of customers in financial difficulty. Most responses agreed with the application of the FCA's current rules, for example, FCA rules requiring 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. However, a very small number of responses thought that applying these FCA rules would be disproportionate, particularly given the typical lower value of BNPL agreements.
- 3.55 On the application of CCA provisions on the provision of information to consumers in arrears and default, responses from consumer groups and the wider lending industry generally agreed that the application of these requirements would be proportionate. A small number of responses thought it might be necessary to adapt some of the CCA requirements for BNPL agreements, for example by applying different trigger points for sending of Notices of Sums in Arrears (NOSIAs).
- 3.56 Some BNPL providers broadly thought that the application of the CCA requirements on the treatment of customers in financial difficulty would be disproportionate given the low level of risk and low value of agreements. Responses noted that the timing of notices required under the CCA could be incompatible with the short-term nature of BNPL agreements, and one suggested that having to provide statutory notices may affect the viability of the product due to the costs involved. Some responses considered that the CCA requirements would be an ineffective way of communicating with

consumers in financial difficulty, with these responses instead advocating for a more flexible, FCA rules-based approach.

## Government response

- 3.57 The government's view is that 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 are vital consumer protections. These requirements ensure that indebted consumers are kept informed of their liabilities and obligations, but are also pointed towards sources of advice. In addition, they provide a trigger for consumers to engage with their lender and signal that forbearance may be required, and gives consumers the chance to limit their indebtedness.
- 3.58 As a result, the government intends that the CCA requirements on the treatment of consumers in financial difficulty will apply to the BNPL and STIFC agreements that it brings into regulation. The government recognises 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 and STIFC agreements given their sometimes very short-term nature. The government will give further consideration to this and will set out any tailored requirements when it publishes draft regulations.
- 3.59 The FCA will consult on its proposals for rules on arrears, default and forbearance for BNPL and STIFC agreements in due course, including cost benefit analysis.

## Section 75 of the CCA

- 3.60 The consultation set out that the government considers that section 75 of the CCA is a strong consumer protection measure that consumers are relatively familiar with, and often use, and therefore that section 75 should apply to BNPL in line with other regulated credit agreements.
- 3.61 The overwhelming majority of responses agreed with the proposed application of section 75. A small number of responses suggested expanding the monetary threshold so that BNPL transactions of any value would be subject to section 75.
- 3.62 Of the small number of responses that disagreed, one thought that similar protections to section 75 should be created in an entirely FCA rules-based regime, whilst another thought that it was unnecessary due to the consumer already receiving goods interest-free and subsidised by the merchant, pointing out that it was likely that there would already be arrangements in place between BNPL providers and merchants which place the responsibility on the retailer for complaints relating to goods sold.

## Government response

- 3.63 The government's view remains that section 75 provides a strong and well-known consumer protection measure, and therefore section 75 should not be disapplied for agreements that are brought within the scope of regulation.

- 3.64 The government recognises that some BNPL transactions will fall outside the current monetary threshold for section 75, and also recognises that some business models may break the debtor-creditor-supplier relationship meaning that section 75 will not apply. However, this is consistent across all regulated credit products and not unique to this regulatory intervention.

## Small agreements

- 3.65 The government suggested that it would be necessary to disapply the small agreements provisions in section 17 of the CCA so that the full suite of CCA requirements would apply to BNPL agreements which do not exceed £50. This was particularly important given that BNPL is frequently used for agreements below £50. The government also sought views on whether any currently regulated consumer credit products, in particular those which are debtor-creditor-supplier agreements, are routinely offered with values not exceeding £50.
- 3.66 The vast majority of responses agreed with the government's proposals. One response from a BNPL provider agreed, so long as the expansion covered all regulated credit products. However, there was very little evidence provided by stakeholders on whether currently regulated small agreements not exceeding £50 are routinely offered by lenders.

## Government response

- 3.67 To ensure consistency in consumer protection across the BNPL and STIFC agreements captured by the scope of regulation, the Government intends to disapply section 17 of the CCA for these agreements when they are brought into regulation.
- 3.68 Since publishing the consultation, the government has become aware of some BNPL providers providing interest-bearing, regulated agreements with values of less than £50. This leads to a potential discrepancy as interest-bearing agreements for credit of £50 or less would fall within the small agreements provisions when taken out at the same lender. This would mean that lenders offering agreements for interest-bearing credit not exceeding £50 would not be subject to, for example, CCA requirements relating to the form and content of agreements or FCA rules on creditworthiness assessments in relation to those small agreements, while lenders offering BNPL or STIFC agreements would be subject to these requirements.
- 3.69 The government considers that this discrepancy is unlikely to arise in practice, given that lenders will likely adopt standardised systems and processes when their currently-exempt lending becomes regulated. However, the government intends to monitor how lenders treat small agreements and may consider this issue as part of broader CCA reform.

## FOS jurisdiction

- 3.70 The consultation set out the government's view that FOS jurisdiction should apply to BNPL agreements.

- 3.71 Responses broadly agreed with the government's proposal, noting that the ability to go to the FOS will provide great consumer protection. Some responses raised concerns regarding the current £750 FOS case fee, noting that it is high in comparison to the typical BNPL transaction of around £50-100.

## Government response

- 3.72 As set out in the consultation, 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.
- 3.73 The government also recognises stakeholders' concerns around the potential disproportionality of the FOS case fee for BNPL agreements. This is a matter for the FOS to consider, but the government will continue its engagement with the FOS.

# Chapter 4

## Next steps

- 4.1 The government is committed to ensuring that regulation of BNPL and STIFC products is proportionate and effective. As set out in chapter 2, the government is minded to extend the scope of regulation so that STIFC products provided directly by merchants online or at a distance are brought into the scope of regulation. However, to enable a final decision to be made, the government is keen to hear stakeholders' views on this part of the market to ensure that this approach will be proportionate. The government would welcome further information being provided to: [buynowpaylater@hmtreasury.gov.uk](mailto:buynowpaylater@hmtreasury.gov.uk) by **Monday 1 August**.
- 4.2 Given the anticipated complexity of the legislation that will implement the new regulatory regime, the government has assessed that it will be necessary to publish and consult on draft legislation, to ensure that it is achieving the policy objectives intended and that any residual issues can be identified and addressed. Following this, the government will proceed to laying the final legislation. The government aims to publish draft legislation around the end of the year. In the consultation, the government asked for respondents' views on the impact of regulation on those with protected characteristics, and will analyse these responses further to help inform its assessment. The policy decisions set out in this document are subject to the government's full consideration of the public sector equality duty. This assessment will be included as part of a draft impact assessment which the government intends to publish alongside the consultation on the draft regulations.
- 4.3 Following the second consultation, the government aims to lay secondary legislation in mid-2023 confirming the scope and framework of the new regulatory regime. This will enable the FCA to consult on its approach for the new regime and undertake a cost-benefit analysis.
- 4.4 The government will continue to work closely with the FCA to enable it to develop its rules. The government will also further consider the transitional regime for bringing firms into regulation, to ensure that it runs smoothly and that firms are given sufficient time to acclimatise to the regulatory requirements that will be imposed on them.
- 4.5 Ahead of regulation, the government is aware that lenders who offer agreements which will be brought into regulation are preparing and adapting their business models in anticipation. In addition, the ASA has continued to make rulings on specific BNPL adverts. BNPL lenders have also commenced sharing data on agreements with credit reference agencies. Finally, the FCA has already taken steps under broader consumer protection legislation to mitigate risks of potential consumer detriment from the use of



BNPL. As a result, four BNPL firms have agreed to change terms in their consumer contracts to make them fairer, easier for consumers to understand and to better reflect how they use them in practice. The FCA will continue to monitor the market and assess whether there are further interventions that it could make under its existing powers.

## Who should respond?

4.6 A range of groups will be interested in the evidence and additional question presented. The government welcomes responses from all stakeholders, in particular from the following sectors in which responses to date suggest STIFC may be provided by merchants:

- Dentistry
- Healthcare
- Education
- Home improvements and maintenance
- Sports clubs
- Vehicle repair
- SME retailers

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

4.7 This notice sets out how HM Treasury will use your personal data for the purposes of the **response to 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)

4.8 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)

4.9 Information includes 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

4.10 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

4.11 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

4.12 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).

4.13 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).

4.14 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.

4.15 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.

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

4.17 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. The list of public bodies appear at: <https://www.gov.uk/government/organisations>

4.18 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)

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

4.20 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.

## How to submit a Data Subject Access Request (DSAR)

**4.21** 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](mailto:dsar@hmtreasury.gov.uk)

## Complaints

**4.22** 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).

**4.23** 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](mailto:casework@ico.org.uk)

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

# Annex A

## List of respondents

A.1 In addition to the organisations listed, HM Treasury received one response from an individual, and one response from an MP.

6M Consulting  
Association of British Insurers  
Addleshaw Goddard LLP  
Affirm Inc  
American Express  
Amigo Loans  
Amplified Global  
APEXX Global  
Advertising Standards Authority  
ASOS  
Association of British Credit Unions  
Australian Finance Industry Association Limited  
Barclays  
Blackhawk Network  
British Retail Consortium  
Capital One  
Consumer Credit Trade Association  
Christians Against Poverty  
Citizens Advice  
Citizens Advice Coventry  
Citizens Advice Scotland  
Clearpay  
ClearScore

Coalition for a Digital Economy  
Confederation of British Industry  
Consumer Action Law Centre and Financial Counselling Australia  
Consumer Council for Northern Ireland  
Debt Managers Standards Association  
Equifax  
Erie Ltd  
Experian  
Fair By Design  
Fair4All Finance  
FCA Consumer Panel  
Feesier  
Financial Data and Technology Association  
Financial Inclusion Commission  
FLA  
Go Fund Yourself  
Gymshark  
Hitachi Capital  
HSBC  
Humm group  
Improveasy  
Innovate Finance  
Keystone Law  
Klarna  
Laybuy  
Lending Standard Board  
Money and Pensions Service  
Mastercard  
Money Advice Trust  
Money and Mental Health  
MoneySavingExpert  
Monzo

Nationwide Building Society

NatWest Group

NewDay

Omni Capital Retail Finance

Osborne Clarke

Pay4Later

PayItMonthly Limited

Payment Assist

PayPal

Provident

QVC

Standard Chartered

Stripe

StepChange

Tabco

The Compliance Company

The Money Charity

The Payments Association

TransUnion

UK Finance

University of Edinburgh

University of Nottingham

University of Leeds

Visa

Vivup

Which?

Xero

Zilch

Zip

## 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)