



Law Society
of Scotland

Consultation response

HM Treasury Regulation of Buy-Now-Pay Later
Consultation on draft legislation

April 2023.



Introduction

The Law Society of Scotland is the professional body for over 12,000 Scottish solicitors.

We are a regulator that sets and enforces standards for the solicitor profession which helps people in need and supports business in Scotland, the UK and overseas. We support solicitors and drive change to ensure Scotland has a strong, successful, and diverse legal profession. We represent our members and wider society when speaking out on human rights and the rule of law. We also seek to influence changes to legislation and the operation of our justice system as part of our work towards a fairer and more just society.

Our Consumer Law sub-committee welcome the opportunity to consider and respond to the HM Treasury Regulation of Buy-Now-Pay Later Consultation on draft legislation¹.

We have the following comments for to put forward for consideration.

Consultation Questions

Chapter 2

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

We welcome the proposed approach given it is, on balance, proportionate.

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

We agree with this approach.

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1136257/BNPL_consultation_on_draft_legislation.pdf

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

We have no comments.

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

We have no comments.

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

We consider it appropriate, but we have the following comments to make in relation to registered social landlords. We note Article 60(F) (7B) (c) of the RAO which provides an exemption for "agreements offered by a registered social landlord (as defined by article 36FA(4)) to its tenants or leaseholders to finance the provision of goods or services" can be used to finance repairs to buildings often to persons on lower income who may struggle to access credit elsewhere.

In essence the issue arises in relation to flatted property, often acquired under right to buy legislation, and whilst those acquiring will in England hold under a long leasehold tenure; in Scotland they will own outright.

We do not consider this being a contentious a question, however, from a Scottish perspective, changing the term "leaseholder" to "owner" may not work as the owners of a registered social landlord (RSL) are its shareholders.

We consider that those who have a common right to property along with the RSL either arising from the titles and/or a tenement management scheme although it should that the work for which credit is given may not relate to work which the owner requires to carry out (for example, it may relate to improvements

not required by either the titles or a tenement management scheme but which the RSL may wish to carry out for the benefit of their tenants who occupy other flats in the block).

Furthermore, it should also be noted that in many circumstances the RSL itself will be carrying out the work and granting time to pay so “same person” exemption in the proposed article 60 F(7A) (a) (i) should apply. In addition, articles 60, 61 of the RAO and 48 of the Exemption Order do provide certain other exemptions.

Finally, as a general observation that it might be easier if the Order provided that the exemptions applied if either “(a) the lender and supplier were the same person or (b) para 7B applied”.

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

Please see response to question 5

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

We have no comments.

Chapter 3

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

We have no comments other than to note that it would be appropriate to keep this provision under review. We are concerned about the potential for consumer prejudice as a result of differing approaches taken by authorised and unauthorised merchants.

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

We have no comments.

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

We have no comments.

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

We are concerned that having a two-tier approach to pre-contract information may lead to confusion for consumers and lenders. In particular, there is the potential for consumers to have difficulties when attempting to compare different credit products. This is an aspect of regulation that should be re-examined as part of the CCA review with a view to harmonising the approach across all regulated credit agreements.

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

The proposed approach seems sensible.

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

Yes, we agree.

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

We have no comments.

Chapter 4

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

We have no comment other than it is important that timescales are reasonable and adhered to.

Chapter 5

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

Yes, we agree and consider that there is a consistent approach across the sector.

Chapter 6

Question 17: What do you expect the impact to be of this proposed legislation on providers of agreements that will be brought into regulation, consumers that use them and merchants that offer them as a payment option?

We support the proposals to the extent that they enhance consumer protection. An inconsistent approach to pre contract documentation may make it more difficult for consumers to compare credit products.

Question 18: Do you agree with the provisional assessment that, on balance, the government's proposed proportionate approach to reform mitigates the negative impacts on those sharing particular protected characteristics and

retain the positive equalities impacts of the products?

We have no comments.

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

We have no data to share.

For further information, please contact:

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