EXPLANATORY MEMORANDUM TO

THE FINANCIAL SERVICES AND MARKETS ACT 2000 (REGULATED ACTIVITIES ETC.) (AMENDMENT) ORDER 2025

2025 No. [XXXX]

1. Introduction

1.1 This explanatory memorandum has been prepared by HM Treasury and is laid before Parliament by Command of His Majesty.

2. Declaration

2.1 Emma Reynolds MP, Economic Secretary to the Treasury, at HM Treasury confirms that this Explanatory Memorandum meets the required standard.

2.2 Daniel Rusbridge, Deputy Director for Personal Finances and Funds, at HM Treasury confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Philip Atkins at HM Treasury, Telephone: 07977 487960 or email: Philip.Atkins@hmtreasury.gov.uk, can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 The instrument will bring interest-free Buy-Now, Pay-Later (BNPL) agreements into regulation under the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544) (RAO). BNPL is a type of interest free credit which allows borrowers to split the cost of purchases in up to 12 regular repayments not exceeding a 12-month period.

4.2 This instrument aims to address lending practices that could potentially harm consumers. Once BNPL products enter regulation, lenders offering them will need to be authorised by the Financial Conduct Authority (FCA). Consumers will additionally have access to a wider range of protections, including the use of the Financial Ombudsman Service (FOS) for redress.

4.3 BNPL agreements will be subject to a tailored application of the Consumer Credit Act 1974 (CCA). Most provisions in the CCA related to information disclosure are disapplied for BNPL agreements by the instrument. This change will allow the FCA to develop information disclosure rules specifically for BNPL lending to ensure consumers have access to clear and accessible information about their BNPL agreements.

4.4 The instrument also introduces a new exemption from article 36A of the RAO (regulated activity of credit broking), ensuring that most merchants (e.g. e-commerce websites) are not subject to credit broking regulations when they refer customers to third-party BNPL providers (e.g. offering a third-party BNPL product at checkout, not their own finance product).

4.5 This exemption does not apply to domestic premises suppliers. A domestic premises supplier is defined as a business that sells, offers to sell, or agrees to sell goods, or offers to supply or contracts to supply services in people's homes.

Where does the legislation extend to, and apply?

4.6 The extent of this instrument (that is, the jurisdictions which the instrument forms part of the law of) is the whole of the United Kingdom.

5. Policy Context

What is being done and why?

5.1 BNPL agreements currently fall under an exemption from consumer credit regulation detailed in article 60F(2) of the RAO. This exemption applies to credit agreements meeting specific criteria, including having no more than 12 payments within 12 months and being interest-free.

5.2 The exemption was designed to avoid regulating low-risk credit arrangements, particularly those offered by SMEs not primarily engaged in financial services. For instance, via this exemption, a gym might offer a 12-month membership that can be paid in interest-free instalments.

5.3 BNPL agreements are usually for small amounts (£100 or less) and short durations and are typically taken out with third-party lenders during online shopping transactions. The BNPL market has expanded rapidly in recent years, with 14 million UK consumers having used it in the 6 months to January 2023.

5.4 There have been growing concerns about consumer harm due to the lack of regulation of the BNPL sector. Notably, the Woolard Review (published by the FCA in February 2021) identified multiple risks associated with BNPL products.[1] These include consumer misunderstanding, the absence of any requirements for affordability checks, and the potential to create high indebtedness.

5.5 In response to the Woolard Review, the Government announced its intention to regulate these products by tabling an amendment to the then Financial Services Bill, which is now section 37 of the Financial Services Act 2021.[2] This legislation facilitated HM Treasury to bring unregulated BNPL products into the consumer credit regulatory regime by permitting provisions of the CCA 1974 to be disapplied.

5.6 The regulatory regime introduced by way of this instrument and subsequent FCA rules will require firms offering BNPL products to perform affordability checks on borrowers and offer clear product information to consumers to prevent unaffordable borrowing and help borrowers make informed decisions. Additionally, BNPL users will benefit from strong rights, such as those under section 75 of the CCA, making it easier to obtain refunds for issues like faulty goods. They will also have access to the FOS, allowing them to escalate complaints against firms to an independent arbitrator.

5.7 The proposals will exempt most merchants from requiring credit broking permissions to offer third-party BNPL products. As set out, this exemption does not apply to domestic premises suppliers. As the Government continues to review the consumer credit regulatory framework, it will assess whether any changes are necessary to the credit broking regime.

[1] https://www.fca.org.uk/publication/corporate/woolard-review-report.pdf

[2] https://www.legislation.gov.uk/ukpga/2021/22/section/37

What was the previous policy, how is this different?

5.8 Before this instrument was made, BNPL was classified as unregulated credit. Lenders relied upon the exemption in article 60F(2) of the RAO and were not required to obtain authorisation from the FCA to offer these agreements, follow FCA rules for consumer credit lending, or comply with any provisions of the CCA.

5.9 As outlined in paragraph 5.4, the lack of regulation raised concerns about potential consumer harm.

5.10 This instrument has brought BNPL products offered by third-party lenders into regulation. As a result, these lenders must obtain authorisation from the FCA to offer BNPL products to consumers, adhere to the FCA's rules on consumer credit and BNPL lending, and comply with specific sections of the CCA.

5.11 The regulatory regime takes an FCA rules-based approach. The instrument has also created a Temporary Permissions Regime for firms seeking FCA authorisation to offer newly regulated BNPL products.

6. Legislative and Legal Context

How has the law changed?

6.1 This instrument amends article 60F of the RAO and the result is to classify BNPL agreements as regulated credit agreements under article 60B(3) of the RAO. BNPL agreements are defined as 'regulated deferred payment credit agreements' in the instrument. As a result, lenders offering the BNPL products being brought into regulation will be required to seek FCA authorisation to offer them and will be required to comply with the FCA's new rules for BNPL lending.

6.2 It also introduces a new article 36FB to the RAO to prevent all merchants offering BNPL agreements needing to seek credit broking authorisation from the FCA. As explained in paragraph 4.5, domestic premises suppliers offering BNPL agreements will still be required to seek credit broking authorisation.

Why was this approach taken to change the law?

6.3 The purpose of this instrument is to regulate BNPL agreements. Regulation under the legal framework of FSMA 2000 is considered the most effective and appropriate method for changing the law and aligns with the approach taken for similar policy measures in financial services. HM Treasury published a Written Ministerial Statement on 21 October 2024 [Ref: HCWS145] confirming its intended approach.[3]

7. Consultation

Summary of consultation outcome and methodology

7.1 The previous Government published consultations in October 2021 and February 2023 to explore the regulatory approach to BNPL products and set out draft legislation for bringing them into regulation respectively. However, legislation was not enacted to achieve this before Parliament was dissolved in May 2024.

7.2 The Government formed in July 2024 has been keen to deliver regulation for BNPL products, acknowledging the two prior consultations on this issue. As a result, in October 2024, the Government published a consultation on updated draft legislation aimed at regulating BNPL products offered by third-party lenders.

[3] https://hansard.parliament.uk/commons/2024-10-21/debates/24102111000007/Buy-NowPay-LaterProducts

7.3 The proposals revised the draft legislation that was consulted on in February 2023 by outlining the Government's plan to disapply most of the CCA's provisions on information disclosure for newly-regulated BNPL agreements.

7.4 The October 2024 consultation was a six-week public consultation.[4] This consultation included 13 questions about the Government's proposals. The Government deemed a six-week consultation period appropriate given its priority to regulate BNPL products and the extensive previous consultation exercises.[5]

7.5 The Government invited written responses and held roundtable meetings with industry and consumer group stakeholders. A total of 61 written responses were received for this consultation.

7.6 The 13 questions were designed to gather feedback from stakeholders regarding the proposed regulatory regime for BNPL agreements. However, most respondents did not organise their feedback to align precisely with the questions asked.

7.7 Respondents expressed a strong desire for action in this area. They generally indicated broad support for disapplying the CCA's provisions on information disclosure to allow for the development of an information disclosure regime by the FCA specifically tailored to the characteristics of BNPL products.

7.8 The Government has published a consultation response, which includes a more detailed summary of the feedback received.[6].

8. Applicable Guidance

8.1 The Government is not providing any guidance in relation to this instrument.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment is submitted with this memorandum and published alongside the Explanatory Memorandum on the legislation.gov.uk website.

Impact on businesses, charities and voluntary bodies

9.2 Over a 10-year appraisal period, the Government anticipates that the legislation will lead to costs ranging from £19.1 to £31.7 million, with a best estimate of £25.4 million. Firms offering newly regulated BNPL agreements will be significantly impacted as they adapt to the new regulatory regime. These firms will face one-off and ongoing expenses for obtaining authorisation from the FCA, adhering to its rules, and paying its annual fees and levies. Additionally, they will encounter costs

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4 https://assets.publishing.service.gov.uk/media/6710efdb8a62ffa8df77b28c/Regulation_of_BNPL_consultation_2024_-_final_17.10.pdf

5 https://www.gov.uk/government/consultations/regulation-of-buy-now-pay-later-consultation; https://www.gov.uk/government/consultations/regulation-of-buy-now-pay-later-consultation-on-draft-legislation. A response to the October 2021 consultation was published in June 2022: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1083547/BNPL_consultation_response__Formatted_.pdf

6 https://www.gov.uk/government/consultations/regulation-of-buy-now-pay-later-consultation-on-draft-legislation-october-2024.

associated with handling FOS complaints and meeting section 75 requirements of the CCA.

9.3 There is no, or no significant, impact on charities or voluntary bodies.

9.4 The legislation does impact small or micro businesses, as some BNPL firms fall into these categories. To ensure consumer protection and maintain consistency across the sector, the Government has opted not to provide specific regulatory exemptions for small and micro businesses.

9.5 However, beyond BNPL firms, the Government believes that exempting merchants from credit broking requirements — when they only broker agreements that will become regulated and are not domestic premises suppliers — will benefit small and micro businesses. This exemption will spare these businesses from the costs associated with FCA authorisation, which includes a £540 application fee for limited consumer credit permission as of April 2025, in addition to ongoing compliance costs. This will enable them to compete with larger merchants who provide a broader range of regulated credit products subject to credit broking regulation.

9.6 There is no significant impact on the public sector. The FCA will incur one-off costs as it brings BNPL firms under its supervision.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The approach to monitoring this legislation is that the FCA will be responsible for assessing the effect of this legislation and related rules. Although the FCA operates independently, HM Treasury will collaborate with the FCA to understand the results of its monitoring and evaluation.

10.2 A statutory review clause is included in the instrument in article 13. In accordance with the requirements set out in sections 28 and 30 of the Small Business Enterprise and Employment Act 2015, the Government plans to review the legislation and publish a report detailing the findings of this review at least once every five years.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None.

12. European Convention on Human Rights

12.1 The Economic Secretary to the Treasury, Emma Reynolds has made the following statement regarding Human Rights:

"In my view the provisions of the Financial Services and Markets Act 2000 (Regulated Activities etc.) (Amendment) Order 2025 are compatible with the Convention rights."

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").