

BUY NOW PAY LATER INSTRUMENT 2019

Powers exercised

- A. The Financial Conduct Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (the “Act”):
- (1) section 137A (General rule-making power);
 - (2) section 137T (General supplementary powers); and
 - (3) section 139A (Guidance).
- B. The rule-making powers listed above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on:
- (1) 12 September 2019 for Annex A and Part 1 of Annex B; and
 - (2) 12 November 2019 for Part 2 of Annex B.

Amendments to the Handbook

- D. The Glossary of definitions is amended in accordance with Annex A to this instrument.
- E. The Consumer Credit sourcebook (CONC) is amended in accordance with Annex B to this instrument.

Citation

- F. This instrument may be cited as the Buy Now Pay Later Instrument 2019.

By order of the Board
30 May 2019

Annex A

Amendments to the Glossary of definitions

This Annex comes into force on 12 September 2019

Insert the following new definitions in the appropriate alphabetical position. The text is not underlined.

BNPL agreement a regulated credit agreement (whether an agreement for running-account credit or fixed-sum credit) which is a *borrower-lender-supplier agreement*:

- (1) to finance the acquisition of *goods*, or *goods* and services, from:
 - (a) the *lender*; or
 - (b) a supplier that is in a limited network of suppliers under a direct commercial agreement with the *lender*,

and where the *credit* cannot be used for any other purpose, including an agreement for a store card but excluding an agreement for a credit card; and

- (2) the terms of which have or may have the effect that some, or all, of the *credit* advanced under the agreement meets the definition of *BNPL credit*.

BNPL credit *credit* in relation to which provision is made that:

- (1)
 - (a) no, or reduced, interest or charges are payable by the *borrower* in respect of an initial period of 56 days or more (“the promotional period”) if the *borrower* repays all or a specified part of the *credit* advanced on or before a certain date; and
 - (b) in the event that the *borrower* does not make payment in accordance with the provision in (a), interest or charges are payable, or are payable at a higher rate, in respect of all or part of the promotional period; or
- (2) the *borrower* will be entitled to a refund or rebate in relation to all or part of the interest or charges payable by the *borrower* in respect of an initial period of 56 days or more if the *borrower* repays all or a specified part of the *credit* advanced on or before a certain date.

BNPL payment condition a provision in a *BNPL agreement* that has the effect described in (1)(a) or (2) of the definition of *BNPL credit*.

Annex B

Amendments to the Consumer Credit sourcebook (CONC)

In this Annex, underlining indicates new text and striking through indicates deleted text.

Part 1: Comes into force on 12 September 2019

3 Financial promotions and communications with customers

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3.3 The clear fair and not misleading rule and general requirements

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3.3.11 G ...

“Buy now pay later” or similar offers

- 3.3.11A G (1) Firms are reminded that the Consumer Protection from Unfair Trading Regulations 2008 (SI 2008/1277), as well as Principle 7 and CONC 3.3.1R, apply to communications and financial promotions in relation to BNPL agreements, including communications with borrowers under existing agreements.
- (2) A communication or financial promotion in relation to a BNPL agreement is likely to be misleading by omission if it:
- (a) refers to a zero percentage or low interest, introductory or other promotional offer available under a BNPL agreement;
 - (b) does so in a way that is likely to influence a customer’s decision about whether to enter into a BNPL agreement or whether and how to make use of credit available under an existing BNPL agreement; and
 - (c) does not also include in a fair and prominent manner material information about relevant risks.
- (3) A firm should also consider whether other communications or financial promotions in connection with BNPL agreements could be misleading by omission if those communications or financial promotions do not also include in a fair and prominent manner material information about relevant risks.
- (4) Relevant risks relating to BNPL credit include the limitations that apply to any zero percentage or low interest, introductory or other

promotional offer, including the circumstances in which interest or charges could become payable and how these would be calculated if those circumstances arose, including the date from which interest or charges would accrue, the rate of that interest or those charges and the amount of principal on which the interest would be charged. The average consumer is likely to need information about these matters to make an informed decision about whether to enter into a BNPL agreement, or whether and how to make use of credit available under an existing BNPL agreement.

- (5) The information that a communication or financial promotion about a BNPL agreement is required to include to avoid a misleading effect, and how that information should be presented, will depend on the context of the communication or financial promotion, including its medium and any other information that the firm has provided to the recipient.

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4 Pre-contractual requirements

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4.2 Pre-contract disclosure and adequate explanations

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Adequate explanations in relation to particular regulated credit agreements

- 4.2.15 R The following information must be provided by the lender or a credit broker as part of, and in addition to that provided under, the adequate explanation required by CONC 4.2.5R, where applicable, in the specified cases:

- (1) for credit token agreements:

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- (e) except in relation to retail revolving credit and BNPL agreements, the limitations on any zero percentage or low interest or other introductory offer; and

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- (8) for retail revolving credit and BNPL agreements, the limitations that apply to any zero percentage or low interest, introductory or other promotional offer, including the circumstances in which interest or charges could become payable and how these would be calculated if those circumstances arose, including the date from which interest or charges would accrue, the rate of that interest or those charges and the amount of principal on which the interest would be charged. If,

for example, failing to meet the conditions for the application of the offer would result in interest being charged at a higher rate, or from the date of the purchase of the *goods* or services or on the total purchase price of the *goods* or services without account being taken of *repayments* made during the offer period, this must be included in the adequate explanation.

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6 Post contractual requirements

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6.7 Post contract: business practices

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6.7.16 R ...

“Buy now pay later” or similar offers

6.7.16A R (1) This rule applies only to *retail revolving credit agreements* and *BNPL agreements* to which Part 6 of the *Payment Services Regulations* does not apply.

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Part 2: Comes into force on 12 November 2019

6 Post contractual requirements

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6.7 Post contract: business practices

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Partial repayments under “Buy now pay later” or similar offers

6.7.16B R (1) This rule applies where:

(a) *BNPL credit* has been advanced to a *customer* under a *BNPL agreement*; and

(b) the *customer* makes a repayment:

- (i) of part of the *BNPL credit*;
- (ii) on or before the date provided for in the *BNPL payment condition* that applies to that *BNPL credit*.
- (2) The *BNPL agreement* must have the effect that, in respect of so much of the *BNPL credit* as has been repaid, the *customer* is liable to pay no more than the *customer* would have been liable to pay if the *BNPL credit* had been repaid in full on or before the date provided for in the *BNPL payment condition*.

TP 8 Other transitional provisions

(1)	(2)	(3)	(4)	(5)	(6)
	Material to which the transitional provision applies		Transitional provision	Transitional provision: dates in force	Handbook provision coming into force
...					
<u>2</u>	<u>CONC 6.7.16B</u>	<u>R</u>	<u>A firm need not comply with CONC 6.7.16BR in respect of drawdowns of credit made on or before 12 June 2019.</u>	<u>From 12 November 2019</u>	<u>12 November 2019</u>
<u>3</u>	<u>CONC 6.7.16B</u>	<u>G</u>	<u>The effect of TP 2 is that where an agreement allows for multiple drawdowns, a firm must comply with CONC 6.7.16BR in respect of drawdowns of credit made after 12 June 2019, but need not do so for drawdowns made on or before this date.</u>	<u>From 12 November 2019</u>	<u>12 November 2019</u>