

After a pause, Buy Now Pay Later (BNPL) regulation becomes one step closer

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On 17 October, HM Treasury revived pursuit of the regulation of BNPL by publishing its consultation on the Draft Legislation.

This work follows efforts by previous governments to find a way to ensure customer understanding, broad brush consistency of approach and good customer outcomes are in an unregulated and somewhat invisible (from a credit reporting perspective) market. Whilst it is recognised that this short form, usually small sum type of lending, has lots to offer in terms of access to credit, smaller scale borrowing and inclusivity (as well as a real opportunity for pragmatism and innovation), some may welcome the bringing of this tranche of consumer credit into the regulatory fold.

Key highlights:

Scope: Deferred Payment Credit (DPC) Agreements offered by third-party lenders remain in scope for the proposed changes, but this current consultation helpfully provides clearer direction than the previous, that merchants directly offering BNPL arrangements without connection to a third-party lender will still be exempt where they meet the 60F(2) requirements. However, Domestic Premises Suppliers offering the newly regulated agreements via third-party lenders will need to be authorised for credit broking. Exemptions will also be retained for agreements financing contracts of insurance, agreements provided by registered social landlords to their tenants and for employer/employee lending.

Pragmatism: This comes in the shape and form of various CCA provisions proposed to be disapplied to this form of lending. This is of particular significance in connection with the information requirements around pre-contract and the form and content of agreements, amongst others. Instead, it is proposed that there will be an information disclosures regime incorporated into the FCA Handbook.

Temporary Permissions Regime (TPR): Adoption of TPR will enable a speedy commencement without the curtailment of current lending approaches. There will be deemed authorisation under Part 4A of FSMA as well as designated landing slots to be set by the FCA. This will commence with an Initial Commencement Date whereby the FCA can set up the TPR and consult on and make the rules relating to the newly regulated DPCs. The new rules will then come into force 12 months' afterwards, on Regulation Day.

The new regulated activities:

- entering into a regulated DPC agreement as lender;
- exercising, or having the right to exercise, the lender's rights and duties under a regulated DPC agreement; and
- credit broking (for domestic premises suppliers that offer newly regulated agreements).

Regulatory controls:

- Section 75 of the CCA to apply to newly regulated agreements;
- Creditworthiness and affordability assessments to be undertaken to help meet responsible lending requirements;
- Credit reporting as part of the FCA's proposed mandatory data sharing requirement for regulated firms would benefit from enhanced data on BNPL agreements (will need to wait and see if this is just for DPC agreements or potentially broader); and
- FOS jurisdiction for complaints.

Innovation: It appears the Government is attempting to mitigate some of the challenges that the existing regulatory framework continues to pose. It proposes an accelerated disapplication of some of the CCA provisions at this juncture to help reduce some of the legal/regulatory friction that is caused by frameworks which have been in situ for quite some time; 50 years in the case of the Consumer Credit Act (**CCA**). The consultation acknowledges the operational (not to mention technical) developments that have affected and benefitted this particular market, which do not necessarily sit comfortably with these historic regulations. The Government has committed to wider reform of the CCA for the wider consumer credit landscape and will look to bring forward a consultation with more detailed proposals in due course. It will be invaluable to see what learnings come from the BNPL approach and to understand what benefit and/or change this might bring in turn to the rest of the consumer credit market.

The consultation closes on 29 November 2024 following which we will get to see how the FCA will drive the rules forward for BNPL.

[Read the consultation](#) →

Key contacts



Helen Simm

Partner

Helen.Simm@brownejacobson.com

+44 (0)330 045 2652



Penny Hallam

Legal Director

penny.hallam@brownejacobson.com

+44 (0)3300452956

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