

UK Proposes New Approach To Regulate 'Buy Now, Pay Later' Market Amid Rising Consumer Debt Concerns

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In the UK, 14 million people used “buy now, pay later” (BNPL) at least once in the six months leading up to January 2023. Frequent users were more than four times as likely as other consumers to have missed a payment on a bill or credit card.

UK regulators have been increasingly concerned about the potential risks the BNPL model poses to consumers, and in particular vulnerable consumers. On 17 October 2024, [HM Treasury published a new consultation on the 2023 draft legislation](#) to regulate the BNPL market.

The consultation closes on 29 November 2024. This short window shows the eagerness HM Revenue & Customs (HMRC) has for reform in this space.

The consultation paper does not give an indication as to when final proposals will come into force (the timing remains subject to “when parliamentary time allows”). That being said, final legislation is expected to be laid in Parliament in early 2025, after which the FCA can finalize the rules so they take effect in 2026.

The Financial Conduct Authority (FCA) published a [response welcoming the government consultation](#) and noting that “we have long called for these products to be brought into our remit.” The FCA echoed that it expects to take on regulation of the sector 12 months after the legislation is made.

What is the consultation paper proposing?

HMRC is proposing to bring BNPL agreements offered by third-party lenders into the FCA’s regulatory remit, requiring impacted firms to become authorized under the Financial Services and Markets Act 2000 (FSMA). With no *de minimis* threshold that would disapply the rules, third-party lenders of BNPL agreements for any amount would be caught.

BNPL agreements provided directly by merchants would continue to be able to rely on an exemption from regulation.

HMRC is proposing that BNPL providers follow a new information disclosure regime developed by the FCA rather than the regime under the Consumer Credit Act 1974 (CCA), which stakeholders have argued would not be appropriate for BNPL products given the heavily prescribed nature of the form, content and timing of required disclosure under the CCA.

Instead, the FCA would develop the BNPL disclosure regime in accordance with its Consumer Duty rules and would consider the suitability of its existing Consumer Credit sourcebook requirements (its specialist sourcebook for credit-related regulated activities) for BNPL lending, adapting the regime where it considers appropriate.

The range of sanctions that can be applied to a lender (namely, unenforceability of agreements and disentitlement) for breach of the CCA would also be disappplied for BNPL agreements. Instead, HMRC is proposing to rely on other consumer protections provided under the FCA’s rules, which include recourse to the Financial Ombudsman Service.

HMRC is also proposing some important related changes to other regulations around consumer credit in respect of the recommended updates to the BNPL regime, in particular:

- Credit brokering for BNPL agreements would not be a regulated activity, unless it takes place in someone’s home.
- The financial promotion regime under Section 21 of the FSMA would be amended so that unauthorized merchants will need to have promotions of third-party BNPL agreements approved by suitably authorized firms.

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How would the proposals be implemented?

HMRC is proposing to implement the changes to the various parts of the existing consumer credit regime (including the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001) through a new statutory instrument, [a draft of which was published](#) alongside the consultation paper.

The key change is the proposed amendment to the current exemption in Article 60F of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001. This exemption would now be turned off where “the lender and the supplier are not the same person,” which would mean such third-party lenders would need to become authorized under the FSMA.

In addition, HMRC is proposing to introduce a new “temporary permissions regime” (TPR). This would allow unauthorized BNPL providers to continue operating until their application for full authorization was processed. There would be two stages:

- **The Initial Commencement Date**, when the TPR would be set up and the FCA would begin to consult on and make its new disclosure rules.
- **Regulation Day**, which would be 12 months following the Initial Commencement Date, when the new FCA rules would come into force.

In order to enter the TPR, third-party BNPL lenders would have to register for the TPR and have been engaged in BNPL activity at the Initial Commencement Date. Following Regulation Day, they would be able to apply for full authorisation (likely through the FCA’s usual “landing slot” process). Such lenders could continue to make use of the TPR from Regulation Day until their authorisation application was approved, refused or withdrawn.

How would the changes impact firms?

HMRC’s proposals would, if implemented, have a material impact on all third-party BNPL lenders. The regulatory and compliance uplift required to move from an unregulated to FCA-regulated environment would be substantial and require investments in systems, controls and personnel. Firms would need to consider the increased costs of these compliance arrangements, which would put pressure on margins and fees.

Potentially impacted lenders will need to track the progress of this legislation carefully, with a view to establishing working groups to manage any authorization process as and when time-lines firm up.

For merchants offering third-party BNPL agreements, the impact would be less material. However, the proposed changes to the financial promotion regime would mean they may need to revisit any existing marketing arrangements. They may also see commercial arrangements impacted as lenders look to adjust to the regulated environment.

For BNPL users, the impact would be driven by the details in the FCA’s rules. However, additional regulatory requirements and disclosure obligations would inevitably increase the “friction” of BNPL purchases, albeit in return for potentially better consumer outcome-driven processes.