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Briefing Doc: UK Regulation of Buy-Now, Pay-Later (BNPL) Consultation on Draft Legislation



Detailed Briefing Document

UK Regulation of Buy-Now, Pay-Later (BNPL) Consultation on Draft Legislation

Overall Objective: To bring BNPL products under the regulatory purview of the Financial Conduct Authority (FCA) and ensure adequate consumer protection.

Key Themes:

Addressing Regulatory Gap

BNPL agreements, currently exempt from the Consumer Credit Act 1974 (CCA) and FCA oversight, pose potential risks to consumers, including over-indebtedness and lack of affordability assessments. This consultation seeks to close this regulatory gap and ensure robust consumer protection.

Scope of Regulation:

Regulation will target BNPL agreements offered by third-party lenders. Merchant-provided BNPL remains exempt, though subject to monitoring for potential future inclusion. Specific exemptions exist for insurance, registered social landlords, and employer/employee lending to ensure continued access to beneficial credit options.

Information Disclosure:

The government proposes disapplying certain prescriptive CCA information requirements for BNPL, deeming them unsuitable for these products. The FCA will develop a tailored disclosure regime under its Consumer Duty, maximising consumer understanding and informed decision-making.

Transitional Framework:

A Temporary Permissions Regime (TPR) will facilitate a smooth transition to regulation. Unauthorised BNPL firms can continue operating under

FCA rules while applying for full authorisation. This avoids market disruption and allows for swift implementation of regulations.

Important Ideas and Facts:

Widespread Use and Potential Harm:

BNPL enjoys significant popularity, with 14 million consumers using it within a six-month period. However, its unregulated nature presents risks like lack of affordability checks and potential for high indebtedness, especially among vulnerable borrowers.

"Given the widespread use of BNPL — with 14 million consumers having used it in the 6 months to January 2023 — and the potential risks of the product, the government is concerned that BNPL sits largely outside of the remit of the FCA." (Chapter 1)

FCA Rulemaking and Consumer Duty:

The FCA will define specific rules for BNPL, encompassing creditworthiness assessments, affordability checks, and credit reporting, ensuring responsible lending practices. This aligns with the overarching principle of the Consumer Duty, requiring firms to act in the best interests of consumers.

Disapplication of CCA Provisions:

The government proposes disapplying various CCA provisions deemed ill-suited for BNPL, including those related to pre-contractual information, the form and content of agreements, ongoing information requirements, variation of agreements, early repayment information, and provisions on arrears, default, and termination.

"The government believes that these provisions would not work well for BNPL products and could lead to information being given to the consumer that is confusing, inappropriate or not provided at the right time." (Chapter 2)

Alternative Consumer Protections:

While disapplying certain CCA sanctions, the government emphasises alternative consumer protection mechanisms, including FCA enforcement powers, the Consumer Duty, and access to the Financial Ombudsman Service (FOS) for dispute resolution.

Wider CCA Reform:

The government acknowledges the limitations of existing CCA provisions and commits to wider reform, aiming to develop a modernised consumer credit regime that better serves the entire market.

Key Questions for Stakeholders:

- ◉ Views on the proposed approach and drafting disapplying various CCA provisions.
- ◉ Feedback on the TPR and its implementation.
- ◉ Insights on the potential impact of regulation on consumers, businesses, and persons with protected characteristics.
- ◉ Further data or evidence regarding the impact of regulation on specific protected groups.

Next Steps:

- ◉ The consultation closes on 29 November 2024.
- ◉ HM Treasury will analyse stakeholder feedback and finalise the Statutory Instrument (SI) for parliamentary approval.
- ◉ The SI will set a "Regulation Day," triggering the application of BNPL regulations.
- ◉ The FCA will develop and consult on specific rules applicable from "Regulation Day" onwards. The FCA expects to take on regulation of the sector 12 months after legislation is made.

Overall, this consultation marks a significant step towards regulating the BNPL market in the UK, balancing consumer protection with continued access to this increasingly popular credit product.

Sources: [Regulation of Buy-Now, Pay-Later Consultation on Draft Legislation](#)" published by HM Treasury, UK.

[FCA Response to BNPL](#)

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