# Regulation of Buy-Now, Pay-Later products

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| **Lead department** | HM Treasury |
| **Summary of proposal** | The Government plans to introduce secondary legislation to bring BNPL under FCA regulation and ensure consumers are given clear information about BNPL products by firms and awarded key statutory rights. |
| **Submission type** | Impact assessment (IA) – 19/12/2024 |
| **Legislation type** | Secondary legislation |
| **Implementation date** | 2026 |
| **Policy stage** | Final |
| **RPC reference** | RPC-HMT-5364(1) |
| **Opinion type** | Formal |
| **Date of issue** | 1 April 2025 |

## RPC opinion

| **Rating**[1] | **RPC opinion** |
|---|---|
| **Fit for purpose** | The Department has estimated an EANDCB albeit with the caveat that it does not capture the full business impact of the proposal. The IA notes that the FCA will consult on the rules for newly regulated agreements and conduct further cost benefit analysis. Following the Initial Review Notice (IRN), and consistent with Better Regulation Framework requirements, FCA fees and levies were excluded from the EANDCB because the BRF deems them out of scope. Familiarisation costs were incorporated in response to the RPC's comments in the IRN. The assessment now provides sufficient justification for not exempting SMB lenders and provides adequate justification for exempting merchants that broker Buy Now, Pay Later (BNPL) products. |

## Business impact target assessment

| | **Department assessment** | **RPC validated** |
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| **Classification** | Qualifying regulatory provision (IN) | Qualifying regulatory provision (IN) |
| **Equivalent annual net direct cost to business (EANDCB)** | £10.2 million (initial IA estimate) | £2.3 million *(2024 prices, 2026 pv)* |

[1] The RPC opinion rating is based only on the robustness of the EANDCB and quality of the SaMBA, as set out in the Better Regulation Framework. RPC ratings are fit for purpose or not fit for purpose.

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| | £2.3 million (final IA estimate) | |
| **Business impact target (BIT) score** | £11.7 million | £11.7 million |
| **Business net present value** | -£20.1 million | |
| **Overall net present value** | -£25.1 million | |

# RPC summary

| Category | Quality[2] | RPC comments |
|---|---|---|
| EANDCB | **Green** | Following the RPC's comments in the IRN, familiarisation costs have been included in the EANDCB while FCA fees and levies have now been excluded, which is consistent with Better Regulation Framework requirements. Additionally, the Department now clearly states which costs contribute to the EANDCB calculation. |
| Small and micro business assessment (SaMBA) | **Green** | The assessment now provides sufficient justification for not exempting SMB lenders and provides adequate justification for exempting merchants that broker Buy Now, Pay Later (BNPL) products. |
| Rationale and options | **Good** | The IA uses credible sources, including the FCA, UK Finance, Government consultations, the Money and Mental Health Policy Institute, and the Money and Pensions Service, to identify the problem. The cause and scale of potential consumer risk were clearly identified, and sufficient evidence of potential harms was presented. The RPC is satisfied that a rationale for intervention has been established. The IA considered options to address the problem, and the Department has justified discarding non-preferred options. |
| Cost-benefit analysis | **Good** | The Department acknowledges that the final impacts on businesses will depend on the FCA's finalised rules, which are yet to be consulted on. They have provided qualitative and quantitative analysis where they understand the financial impact, using reputable sources. Uncertainty has been addressed with central, low, and high-cost estimates. The revised IA now includes a discussion on risks and unintended consequences. |
| Wider impacts | **Good** | The original IA provided discussion of the policy's impact on competition, innovation, consumers' credit reports and credit scores, equity and trade |

[2] The RPC quality ratings are used to indicate the quality and robustness of the evidence used to support different analytical areas. The definitions of the RPC quality ratings can be accessed here.

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| | | implications. The revised IA now also considers the impact on the mainstream BNPL model, borrowing costs and the cost of goods, and the impact on the availability of credit. |
| Monitoring and evaluation plan | **Satisfactory** | The IA did not contain a detailed monitoring and evaluation (M&E) plan as the FCA will be tasked with developing a tailored information disclosure regime for BNPL agreements under the preferred option. The Department has made a commitment to reviewing the legislative provisions and publishing a report setting out the conclusions of the review at least every five years.<br>Following the IRN, the M&E section now discusses potential outcomes the Department would examine when assessing the success of the regulation |

# Response to initial review

As originally submitted, the IA was not fit for purpose for the following reasons:

EANDCB

1. The Department included fees and levies imposed to recover the costs of additional regulatory activities in the EANDCB calculation. These fees are considered out of scope for the EANDCB.
2. The IA did not monetise familiarisation costs.

SaMBA

1. The analysis did not address any potential disproportionate impacts on SMB lenders.
2. The IA did not offer a sufficient justification for not exempting SMB lenders from the regulation.
3. Consideration was not given to whether mitigation measures for smaller BNPL (BNPL) lenders would be appropriate, nor did it provide sufficient justification as to why such measures cannot be considered at this stage of policy development.
4. The SaMBA did not provide a sufficient case for exempting SMB merchants that exclusively broker BNPL agreements, demonstrating with a degree of certainty that most of the policy benefits could still be achieved despite exempting small and micro– merchants who only broker BNPL agreements.

The Department has now:

EANDCB

Removed FCA fees and levies imposed to recover the costs of additional regulatory activities from the EANDCB calculation and included familiarisation costs.

SaMBA

The SaMBA now addresses potential disproportionate impacts on SMB lenders and provides sufficient justification for not exempting SMB lenders. Adequate justification in now also provided for exempting SMB merchants that exclusively broker BNPL agreements.

# Summary of proposal

Buy-Now, Pay-Later (BNPL) describes a type of interest-free instalment credit that allows borrowers to divide the cost of purchases into regular payments over a period not exceeding 12 months. The assessment underscores potential consumer risks associated with the current lack of regulation in BNPL agreements. These risks include misleading promotions, inadequate affordability assessments, and the potential for significant indebtedness. The Government plans to introduce secondary legislation to bring BNPL under FCA regulation to ensure consumers are given clear information about BNPL products by firms and awarded key statutory rights like Section 75 of the CCA (creditor is jointly and severally liable for breaches of contract or misrepresentation by suppliers in debtor-creditor-supplier agreements). Consumers would also gain access to independent complaints handling through the Financial Ombudsman Service (FOS).

# EANDCB

The Department has estimated an EANDCB albeit with the caveat that it does not capture the full business impact. The IA discloses that the extent of the policy impact will depend on the FCA's finalised rules which are yet to be consulted on. It is also stated that the FCA will conduct its own CBA and consult with its independent CBA panel.

The original EANDCB estimate accounted for:

- Costs to firms of seeking FCA authorisation
- Compliance with FCA rules
- FCA fees and levies
- Recourse to the Financial Ombudsman Service
- Consumer Credit Act (CCA) requirements: section 75 claims

Following the IRN, the EANDCB now accounts for:

- Costs to firms of seeking FCA authorisation
- Compliance with FCA rules
- Recourse to the Financial Ombudsman Service
- Consumer Credit Act (CCA) requirements: section 75 claims
- Familiarisation with the legislation
- CCA familiarisation costs

The FCA fees and levies were excluded from the EANDCB which is consistent with the requirements of the Better Regulation Framework. Familiarisation costs were incorporated in response to the RPC's comments in the initial review notice. Additionally, the Department now clearly states which costs contribute to the EANDCB calculation.

# SaMBA

The assessment recognizes that small and micro businesses will be impacted by the proposed regulation. However, it emphasizes that the primary participants in the Buy

Now, Pay Later (BNPL) market are large international companies or their subsidiaries.

Using Companies House returns, the revised IA now identifies five small businesses which currently provide unregulated BNPL products that would be impacted by the new regulation.

The assessment now also provides sufficient justification for not exempting SMB lenders, stating that the five small businesses already hold authorisation from the FCA for consumer credit lending and offer various regulated credit products to consumers alongside BNPL products. As such, the Department is of the opinion that the five SMBs are unlikely to face difficulties in adapting to the new regulatory requirement for BNPL lending. Additionally, the revised assessment also states that smaller businesses often have less financial resilience compared to larger financial institutions. It is argued that this could limit their ability to handle financial shocks such as an accumulation of late payments from customers. The Department highlights that this could result in SMBs adopting aggressive debt collection practices, placing extra pressure on consumers already experiencing financial difficulties. Therefore, the Department deems regulatory oversight of BNPL products for all lenders essential for consumer protection.

The revised IA now provides adequate justification for exempting merchants that broker Buy Now, Pay Later (BNPL) products, such as those at online checkouts, while not exempting brokers operating from domestic premises. The assessment indicates that the regulation would impose significant burdens on these merchants, particularly affecting small and medium-sized businesses (SMBs). The Department contends that this could lead to a decrease in the number of merchants offering BNPL products at checkout, thereby reducing consumer credit options. The Department asserts that the exemption would not compromise consumer protections, as merchants are prohibited from issuing their own financial promotions about BNPL products without authorization from the Financial Conduct Authority (FCA). Furthermore, consumers directed to a BNPL provider during the checkout process will receive pre-contractual information in accordance with FCA regulations. The IA could also have considered whether the additional regulation of BNPL products may lead to benefits for those small businesses that do not currently offer BNPL at the point of sale.

The SaMBA notes that merchants who operate as domestic premises suppliers, brokering BNPL agreements in-person at a consumer’s home, are not exempt due to the higher likelihood of pressure selling in such environments.

However, no quantitative or qualitative assessment of impacts on small, micro and medium-sized businesses was provided, with the Department citing limited evidence as their consultation in February did not provide substantive feedback on potential SMB impacts.

# Rationale and options

The IA uses relevant evidence from credible sources such as: the FCA, UK Finance, two consultations published by the Government, the Money and Mental Health Policy

Institute, and the Money and Pensions Service to support the identification of the problem under consideration in the unregulated BNPL market where applicable:

The Department has made it clear that the unregulated BNPL market enabled by the exemption in article 60F(2) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (the RAO) results in:

- no requirement for BNPL agreements to comply with provisions of the Consumer Credit Act (CCA),
- firms offering BNPL not needing to be authorised and regulated by the FCA and
- the market is not under the jurisdiction of the FOS.

The IA argues that the exemption has resulted in several risks to consumer detriment:

1. how BNPL products are promoted to consumers and presented as payment options
2. misunderstanding of BNPL by consumers, including absence of information given to consumers about features of agreement
3. absence of any requirements to undertake affordability assessment
4. the potential to create high levels of indebtedness
5. inconsistency of treatment of customers in financial difficulty
6. little visibility of BNPL debts on an individual's credit file.

These risks are highlighted to cause potential harms to consumers, including:

1. **Problem debt:** almost a third of BNPL users surveyed in November 2023 had borrowed from elsewhere to pay off BNPL debt in the previous 12 months.
2. **Late fees:** 19% of users surveyed in the FCA's Financial Lives 2022 that used fee-charging providers were unaware of the fees.
3. **Impulse buying:** Money and Pensions Service found that 38% of BNPL users spent more than they planned because of BNPL options available at checkout, and Money and Mental Health Policy Institute found that 43% of BNPL users who reported mental health problems believed that the availability of BNPL products at checkout encouraged them to spend more than they usually would.
4. **Lack of redress:** Consumer groups have highlighted that BNPL users currently lack the legal rights to redress that are available to users of regulated credit products.

The scale of consumers potentially at risk of harm is highlighted using data from UK Finance which estimates that around 27% of UK adults used BNPL products in the six months to January 2023. With the total value of BNPL transactions rising by around 50% in the 12 months from March 2022 to March 2023.

As the cause of the problem was clearly identified, the scale of potential consumers at risk was highlighted and sufficient evidence was presented to underline the

potential harms to consumers, the RPC is content that a rationale for intervention has been clearly established.

The assessment considers four options, one of which is non-regulatory, alongside the do-nothing option:

1. Do nothing: the status quo remains unchanged
2. Voluntary code: the Government would collaborate with lenders, regulators and consumer groups to promote best practices in the industry and safeguard consumers (non-regulatory option)
3. Regulate BNPL agreements with broad application of the CCA's provisions
4. Regulate BNPL agreements with FCA rules for information requirements (preferred option)
5. Defer regulation to CCA reform

The considered options appear to address the problem under consideration and the Department has provided sufficient justification for discarding the non-preferred options. Notably, the Department considered consultation responses when formulating the preferred option as there was criticism towards the broad application of the CCA, making option 3 unsuitable for BNPL to the stakeholders that responded.

# Cost-benefit analysis

The Department has acknowledged that the full impact on businesses will depend on the FCA's finalised rules which are yet to be consulted on. As such, the CBA presented in the IA is limited to:

- Costs to firms of seeking FCA authorisation
- Compliance with FCA rules
- FCA fees and levies
- Recourse to the Financial Ombudsman Service
- Consumer Credit Act (CCA) requirements: section 75 claims
- Costs to the FCA for bringing BNPL into regulation
- Familiarisation with the legislation
- CCA familiarisation costs

According to the Department, the full impacts of the regulation will be assessed in the FCA's cost benefit analysis.

The Department has provided both qualitative and or quantitative analysis where they have a firm understanding of the financial impact on businesses. The CBA uses data from reliable sources such as:

1. Financial Conduct Authority
2. Office for National Statistics
3. Financial Ombudsman
4. Bank of England

The monetised impacts are accompanied by a sufficient walkthrough of the analysis and assumptions and appear to cover a range of impacts that can be assessed at the current stage of policy development. Uncertainty has been addressed to some extent. Given the absence of robust data, the Department uses 75% and 125% scenarios to create low and high estimates respectively.

The revised IA now includes a discussion on risks and unintended consequences. It acknowledges the possibility that the Financial Conduct Authority's (FCA) final rules may either be overly prescriptive for the Buy Now, Pay Later (BNPL) sector or insufficiently stringent for consumer groups. The Department emphasizes risk mitigation by noting that the FCA will publish a consultation, allowing all stakeholders to express their views before the rules are finalised.

The assessment covers non-monetised impacts in sufficient detail, highlighting the cost impact the measure would have on financial promotions, creditworthiness and affordability checks, and costs to domestic premise suppliers. The assessment also discusses non-monetised benefits to lenders and consumers in sufficient detail.

# Wider impacts

The original IA provided discussion of the policy's impact on competition, innovation, consumers' credit reports and credit scores, equity and trade implications. The revised IA now also considers the impact on the mainstream BNPL model, borrowing costs and the cost of goods, and the impact on the availability of credit.

Competition

The Department's assessment indicates that they do not foresee a significant impact on market competition among firms offering newly regulated agreements or within the broader consumer credit market. This conclusion references an FCA publication, which highlights a correlation between the use of Buy Now, Pay Later (BNPL) products and other credit products, such as credit cards. However, to reinforce this point, the Department should specify whether the correlation is positive or negative.

The Department has also commented on the possibility of some BPL firms exiting the market rather than comply with the new regulatory regime. Nevertheless, they contend that, given the sector's general acceptance of regulatory measures, it is improbable that there will be significant withdrawals from the market.

The assessment acknowledges that exempting merchants from credit broking regulation may lead to a dominance of BNPL agreements, potentially limiting consumer choice and the competitiveness of non-BNPL point of sale credit agreements. However, the Government believes other consumer credit products will remain essential, especially for higher-value purchases, ensuring diverse financing options for consumers.

Following the RPC's initial review, the Department now states that their internal analysis of current market dynamics does not indicate an imminent market shift upon the introduction of the proposed regulatory regime that would reduce the ability of smaller BNPL firms to compete. It is argued that consumer demand for flexible

payment options remains strong, providing a stable foundation for smaller BNPL companies to thrive.

To enhance the assessment, it would be prudent to consider contingency plans in case underlying assumptions prove incorrect. Specifically, the assumption that significant market exits are unlikely following the implementation of the proposed regulation, should be carefully evaluated.

Impact on the mainstream BNPL model

Following the initial review notice, the Department now considers changes in BNPL business models to bypass the need for conducting affordability checks on each BNPL transaction. The assessment explores a potential shift to a running account model, similar to a credit card. However, the Department finds it unlikely that there will be a widespread shift to this model. The current BNPL approach relies on being seamlessly integrated into a merchant's check out system as a payment method, and BNPL firms shifting to a running account model would prevent such seamless integration unless the merchant has credit broking permissions.

Impact on borrowing costs and the cost of goods

The Department now argues that BNPL firms can not directly increase borrowing costs for consumers, except by potentially raising fees for late payments. Cost of goods could be influenced if BNPL firms decide to increase transaction fees they charge to merchants and these merchants raise their prices in response. However, it is stated that merchants might consider removing BNPL options altogether if that was to occur given the impact it might have on sales to consumers who use debit cards or other forms of credit.

Innovation

The Department does not expect the regulation to significantly affect innovation among firms providing BNPL agreements.

Impact on the availability of credit

The Department now acknowledges that there could be a tightening of the availability of BNPL products once they enter regulation, particularly for those with poor credit histories. However, the Department is more concerned with preventing irresponsible lending practices that could lead to financial distress for consumers.

Impact on consumers' credit reports and credit scores

The IA states that including on-time BNPL payments in credit reports can enhance creditworthiness, while missed or late payments could harm it. Overall, the Government believes that regulating BNPL products will raise awareness about maintaining good credit history and encourage better financial habits. However, the IA could have provided more assessment of whether continued use of BNPL by some groups of vulnerable consumers could have a negative impact on creditworthiness which affects their ability to apply for other types of loans including mortgage products.

Equality impacts

The assessment presents statistics on BNPL agreement users, indicating that usage is generally consistent across genders but varies by age, ethnicity, and household income. Adults with vulnerability characteristics—such as poor health, negative life events, and low resilience—are more likely to use BNPL products, with 53% of users in the 12 months leading up to May 2022 exhibiting one or more of these characteristics.

The Department makes two key points that the RPC deems to be satisfactory consideration of equality impacts:

1. The proposed regulation aims to mitigate the negative impacts of BNPL use across different groups sharing particular protected characteristics.
2. The Department will continue to consider and address equality impacts as the regulation progresses.

Trade implications

No expected impact on international trade and investment

# Monitoring and evaluation plan

The IA did not contain a detailed monitoring and evaluation (M&E) plan as it will be the responsibility of the FCA to develop a tailored information disclosure regime for BNPL agreements under the preferred option. However, the Department has stated that they will engage with the FCA to understand the outcome of its M&E plan, alongside a commitment to review the legislative provisions and publish a report setting out the conclusions of the review at least every five years under Article 111 of the draft legislation (and in accordance with requirements under sections 28 and 30 of the Small Business Enterprise and Employment Act 2015).

Following the initial review notice, the M&E section now discusses potential outcomes the Department would examine when assessing the success of the regulation, referencing the following:

1. How effectively the regulation has achieved the Government's objectives concerning consumer protection and affordable lending practices.
2. Changes in consumer behaviour and levels of indebtedness and access to BNPL products.
3. Unintended consequences of BNPL regulation such as potential restrictions to accessing this form of credit for certain groups.

**Regulatory Policy Committee**
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