

# The UK's Woolard Review Proposes Regulations for BNPL Credit Agreements

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On 2 February 2021, the Financial Conduct Authority (the FCA) published a report on the U.K. unsecured credit market (the Woolard Report), which makes several recommendations designed to generate alternatives to high-cost credit in the U.K. consumer credit market. Among these recommendations is a proposal to regulate all “buy now, pay later” (BNPL) credit agreements. The Woolard Report concludes that regulation of such agreements is required because BNPL products promote easy access to credit but are not suitable for all borrowers due to an absence of credit checks (or use of soft credit checks) and related customer due diligence in BNPL processing. The FCA is likely to implement the recommendation to regulate all BNPL products.

Under current legislation, certain “borrower-lender-supplier” agreements are exempt from regulation. In order to qualify for exemption, credit must be offered on an interest-free basis and the borrower must not be required to make more than four repayments. While these conditions form a narrow exemption group, a number of BNPL providers do offer such products because the products are simple to market and execute in contrast to regulated consumer credit products. In the regulated consumer credit context, a lender must take a number of steps before making an offer of credit, and even after conclusion of a credit agreement, the customer has recourse that includes various lengthy default management procedures and a cooling-off period that would enable potential withdrawal from the agreement.

Bringing all BNPL products into the scope of U.K. regulation will mean that the full range of consumer protection measures will apply even to small interest-free loans with simple repayment schedules. Lenders offering unregulated BNPL products will therefore be required to implement systems and controls to ensure that all their products are compliant with the FCA’s consumer credit rules. Customers will need to undergo a full credit check and suitability assessment. Lenders will need to offer cooling-off periods and will be subject to prescribed default management processes in the event of a customer default. For the major BNPL providers (who are already regulated to provide products that do not fall within the narrow borrower-lender-supplier exemption), this change will not require additional approvals but will reduce the range of products that can be made available to consumers. The smaller BNPL providers that provide exclusively unregulated credit will be required to seek authorization for their agreements, which is a time-consuming and potentially expensive process. Given the increase in provision and demand for BNPL offerings among consumers, we expect this market to undergo additional regulatory scrutiny in the U.K. and elsewhere. BNPL providers will need to adjust by increasing their provision of regulated products or obtaining required authorizations.