

DRAFT FOR CONSULTATION

Credit Contracts and Consumer Finance (Buy Now Pay Later) Amendment Regulations 2022

Governor-General

Order in Council

At Wellington this day of 2022

Present:
in Council

These regulations are made under section 137A and 138 of the Credit Contracts and Consumer Finance Act 2003 on the advice and with the consent of the Executive Council.

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Regulations

1 Title

These regulations are the Credit Contracts and Consumer Finance (Buy Now Pay Later) Amendment Regulations 2022.

2 Commencement

These regulations come into force on [date] 2023.

3 Principal regulations

These regulations amend the Credit Contracts and Consumer Finance Regulations 2004.

4 Regulation 3 amended (Interpretation)

In regulation 3, insert in its appropriate alphabetical order:

BNPL contract (buy now pay later contract) means a contract entered into between a lender and a debtor—

- (a) which provides credit to enable the debtor to buy goods and services from a third party; and
- (b) in respect of which the debtor is not charged interest or credit fees; and
- (c) in circumstances where the debtor is a natural person

Option 1 starts

5 New regulation 4AEA inserted (When affordability requirements replaced for BNPL contracts)

After regulation 4AE, insert:

4AEA When affordability requirements replaced for BNPL contracts

- (1) This regulation applies to a BNPL contract that—
 - (a) is declared to be a consumer credit contract under regulation 5B; and
 - (b) is not exempt under regulation 18I from the affordability requirements of these regulations.
- (2) Regulations 4AC to 4AN do not apply.
- (3) However, the requirements of section 9C(3)(a)(ii) of the Act apply.

Option 1 ends

6 New cross-heading and regulation 5B inserted

After regulation 5A, insert:

BNPL contracts are consumer credit contracts

5B BNPL contracts declared to be consumer credit contracts

It is declared under section 137A(1) of the Act that a credit contract between a lender and a debtor is a consumer credit contract if it is a BNPL contract.

7 New regulation 18I inserted (Certain BNPL contracts exempt from affordability assessments)

After regulation 18H, insert:

18I Certain BNPL contracts exempt from affordability assessments

- (1) A BNPL contract is exempt from the application of section 9C(3)(a)(ii) of the Act if the total credit limit extended by the lender to the borrower is \$600 or less.
- (2) In this regulation, unless the context otherwise requires, **total credit limit**, in relation to a BNPL contract, is calculated as follows:

$$(a) + (b)$$

where—

- a is the maximum unpaid balances permitted under all BNPL contracts that are revolving credit contracts between the lender and the borrower
 - b is the unpaid balances on all other BNPL contracts between the lender and the borrower.
- (3) The exemption provided by subclause (1) applies only if the lender first obtains information from a credit report (as defined in the Credit Reporting Privacy Code) on the consumer in a manner permitted by that code and—
 - (a) that report includes, where available, all information set out in paragraph (e) of the definition of credit information in the code, namely—
 - (i) the type of credit account of the borrower; and
 - (ii) the amount of credit extended to the borrower; and
 - (iii) the capacity of the borrower (for example, account holder, joint account holder, or guarantor); and
 - (iv) the status of the account as open or closed; and
 - (v) the date the account was opened; and
 - (vi) if the account is closed, the date it was closed; and
 - (vii) details of the credit provider; and
 - (viii) the credit provider's client reference number; and
 - (ix) the repayment history information in relation to the account; and
 - (b) the lender provides to the credit reporter all the information referred to in paragraph (a); and

- (c) the lender discloses to the borrower at the time of each purchase made using a BNPL contract, and in the manner required by section 35 of the Act,—
- (i) the date and amount of payments required for the purchase:
 - (ii) details of any default fees that may be payable under the contract, including how and when those fees would become payable.

Clerk of the Executive Council.

Explanatory note

This note is not part of the regulations, but is intended to indicate their general effect.

Regulatory impact statement

The [name(s) of agency/agencies] produced [a regulatory impact statement/regulatory impact statements] on [date] to help inform the decisions taken by the Government relating to the contents of this instrument.

[A copy of this regulatory impact statement/Copies of these regulatory impact statements] can be found at—

- <https://www.mbie.govt.nz/business-and-employment/consumer-protection/buy-now-pay-later/>
- <https://treasury.govt.nz/publications/informationreleases/ris>

Issued under the authority of the Legislation Act 2019.

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These regulations are administered by the Ministry of Business, Innovation, and Employment.