Submission from Bumper on the draft Financial Services and Markets Act 2000 (Regulated Activities etc.) (Amendment) Order 2025

BUMPER

WRITTEN EVIDENCE TO THE SECONDARY LEGISLATION SCRUTINY COMMITTEE

Financial Services and Markets Act 2000 (Regulated Activities etc.) (Amendment) Order 2025

Overview:

There is widespread concern amongst Buy-Now-Pay-Later (BNPL) providers with regards to a 'merchant exemption' loophole, which will allow retailers to provide their own BNPL services to consumers without falling in scope of regulations. This poses a threat to consumer protection and requires immediate action.

Further detail:

At Bumper, we welcome HM Treasury's work to introduce BNPL regulations alongside the FCA, which will ensure that the appropriate safeguards are in place. However, we – and many others in the industry – have concerns about a 'merchant exemption', which derives from the Statutory Instrument (SI) currently only applying to third-party lenders. As a result, merchant retailers will still be able to offer unregulated BNPL directly to customers, without them being required to undertake affordability assessments, or report indebtedness to credit reference agencies (CRAs) etc.

There is an innate inconsistency with this approach, which we believe undermines the pursuit of good retail customer outcomes. Specifically, an individual may purchase products and services from one business utilising a third-party BNPL offering on one occasion, and then use an equivalent financial product directly from a similar business, but experience a significantly different lending journey whilst they believe/expect the financial products to be exactly the same (i.e. short-term interest-free loans, with appropriate checks and reporting). This is likely to cause real confusion and notable harm when coupled with the outcome of only one of the loans being properly recorded with the CRAs, which also undermines the accuracy of credit scores and future affordability assessments.

We have heard a number of businesses are preparing to offer their own BNPL products to consumers, indicating that these are very live risks that require urgent government attention.

Having spoken to HM Treasury officials, we know that this loophole exists due to the definitions of fixedsum credit agreements in Section 10 of the Consumer Credit Act (CCA), which does not specify what sort of organisation is providing the credit. As a result, to capture retailer-provided BNPL agreements here, changes to the current law would be required to differentiate between various credit providers (such as retailers, football clubs, or gyms), or the specific goods and services for which the credit is offered, to ensure unintended types of credit are not caught under BNPL regulations.

Next steps

We encourage the Committee to bring this matter to the special attention of the House and note it as an issue within the report to government on this SI as something which we expect to play out once regulations come into force. Separately, we are calling for a review of these definitions as part of its reforms to the CCA taking place later this year, in order to separate retailer credit providers and allow them to fall within scope of BNPL regulations.

Response from His Majesty's Treasury

1. BNPL products offered by the merchant and by third-party lenders may appear identical. Given this, why is it appropriate they are either regulated or not, depending on who the provider is?

    - The Government maintains that it is crucial to keep the article 60F(2) exemption for low-risk, low-value and everyday transactions provided by small businesses – such as gym memberships, subscriptions or travel season tickets.

    - It believes that regulating these products would be disproportionately disruptive to the low level of risk they pose; there is little, if any, evidence of there being a substantive risk of consumer detriment associated with these products.

    - The providers of these agreements are still subject to rules and guidance on advertising and financial promotions, to ensure any communications are fair, clear and not misleading.

2. Does unregulated merchant-provided BNPL lead to the possibility of increased consumer harm? For example, because no affordability checks are required and the loans will not contribute towards credit scores.

    - The government has so far not seen any substantive evidence of merchants providing their own BNPL agreements on a scale comparable to that of third-party lenders. Evidence instead suggests that most merchants still prefer to collaborate with third-party lenders.

    - Additionally, since any merchant-provided BNPL lending would be conducted at the merchant's own risk, there are strong incentives for merchants to ensure that such lending remains affordable.

    - Users of merchant-provided credit (such as the gym membership and subscription examples mentioned above) already benefit from broader consumer protection legislation. This includes agreements being subject to:

        - rules and guidance on advertising and financial promotions, ensuring that communications are fair, clear and not misleading;

        - the Consumer Rights Act 2015 concerning the fairness of contract terms; and

        - the Consumer Protection from Unfair Trading Regulations 2008 in relation to unfair commercial practices.

    - Additionally, the FCA has the authority to act under broader consumer protection regulation and has already used these powers to mitigate potential consumer harm from the use of currently unregulated BNPL services. The FCA's action to date includes securing changes to potentially unfair and unclear terms in the contracts of six BNPL firms and addressing issues related to financial promotions.

3. The submission argues that "a number of businesses are preparing to offer their own BNPL products to consumers, indicating that these are very live risks". Does this accord

with HMT’s current view of the market? I note that at the time of the consultation response, “the Government does not currently see any evidence that merchants are seeking to offer BNPL agreements on a scale similar to third-party lenders”. However, that was some months ago, and the final part of the sentence indicated that that may have been evidence that merchants were seeking to offer BNPL at some scale.

- We have still not seen substantive evidence of emerging activity in this space; we heard anecdotal evidence from one firm about a large car dealership group offering its own BNPL product to its customers directly. Having explored further, this product will fall under the new regulatory regime because the credit is provided by the parent company of the dealership group. As a result, the company providing the BNPL product will be considered a third-party BNPL lender like Klarna, PayPal, and Clearpay.
- To stay abreast of emerging trends in the merchant-provided BNPL market, the government continues to work closely with the FCA and liaise with consumer groups. Should it see significant market growth or any potential for consumer harm to materialise at scale, it will not hesitate to intervene.
- However, we think it is unlikely that many merchants will choose to offer BNPL directly at scale, rather than using a third-party lender. This is because merchants would have to provide the lending capital and bear the full credit risk themselves, including the risk of customers not paying, paying late, or defaulting — these risks can negatively affect cash flow. In addition, providing lending would significantly impact a business’s balance sheet: businesses would see higher liabilities, which could make their financial position appear weaker. Merchants would also need to have sophisticated systems in place to manage the lending process.
- For larger merchants, it is more likely that they would set up a subsidiary to separate the credit risk from their main business operations. This approach was taken by Apple in the US in 2023 when it launched BNPL as a payment option for its products through a subsidiary, Apple Financing. Under the new regulatory regime for BNPL products in the UK, such an arrangement would be classified as third-party lending and would therefore be subject to regulation. Ultimately, Apple discontinued its own BNPL offering and now provides BNPL products strictly through third-party lenders such as Affirm and Klarna.

4. The submission recognises that the issue arises from the wording of the Consumer Credit Act 1974, and its inability to distinguish between ‘genuine’ BNPL and low-risk activities such as gym memberships and dental payment plans. The consultation response states that to separate types of merchant providers would be “complex and would require changes to fundamental aspects of the consumer credit regulatory framework”. The submission calls for exactly such changes. Is a review of these CCA definitions planned? If so, on what timescales? If not, why is that given the inconsistencies and risks described?

    - Work is currently underway to review and reform the Consumer Credit Act (CCA), with the aim of establishing a modernised consumer credit regime, simplifying the regulatory requirements and reducing costs to businesses while maintaining robust consumer protections.

- Due to the scale and complexity of the CCA the Government is consulting on the reforms in two phases.
- The Phase 1 consultation was published in May and looks at information requirements, sanctions and criminal offences. The Phase 2 consultation will look more specifically at rights and protections, including definitions.
- We plan to publish the Phase 2 consultation later this year, and we will be seeking views from all relevant stakeholders on the government’s proposals.