



## COVERSHEET

<b>Minister</b>	Hon Andrew Bayly	<b>Portfolio</b>	Commerce and Consumer Affairs
<b>Title of Cabinet paper</b>	Credit Contracts and Consumer Finance (Buy Now Pay Later) Amendment Regulations 2024	<b>Date to be published</b>	4 December 2024

### List of documents that have been proactively released

<b>Date</b>	<b>Title</b>	<b>Author</b>
October 2024	Credit Contracts and Consumer Finance (Buy Now Pay Later) Amendment Regulations 2024	Office of the Minister of Commerce and Consumer Affairs
24 October 2024	Credit Contracts and Consumer Finance (Buy Now Pay Later Exemptions) Amendment Regulations 2024  LEG-24-MIN-0217 Minute	Cabinet Office

### Information redacted

**YES / NO** (please select)

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Office of the Minister of Commerce and Consumer Affairs  
Chair, Cabinet Legislation Committee

**CREDIT CONTRACTS AND CONSUMER FINANCE (BUY NOW, PAY LATER EXEMPTIONS) AMENDMENT REGULATIONS 2024**

**Proposal**

- 1 This paper seeks authorisation to submit to the Executive Council the Credit Contracts and Consumer Finance (Buy Now, Pay Later Exemptions) Amendment Regulations 2024 (the **Amendment Regulations**).

**Policy**

*The original approach to regulating Buy Now Pay Later included some exemptions*

- 2 In October 2022, Cabinet agreed to declare Buy Now Pay Later (**BNPL**) contracts to be consumer credit contracts under the Credit Contracts and Consumer Finance Act 2003 (the **Act**) [GOV-22-MIN-0038 refers]. The Credit Contracts and Consumer Finance (Buy Now, Pay Later) Amendment Regulations 2023 (the **original Regulations**) came into effect on 2 September 2024.
- 3 The original Regulations give consumers using BNPL many of the same protections as borrowers under other consumer credit contracts. Obligations are however applied proportionately, having regard to the nature of BNPL and the lack of interest and credit fees, to allow the benefits of BNPL to be retained. This was achieved by exemptions that remove or modify obligations to assess affordability and suitability of the loan.
- 4 The original Regulations do not provide BNPL providers with relief from compliance with provisions in the CCCFA relating to unreasonable fees (such as sections 41 and 44A), which limit default fees to reasonable amounts directly related to the costs incurred by the provider due to the default. These provisions were designed for traditional credit products where lenders can recover costs and losses through interest charges and credit fees, which BNPL providers do not charge for consumers paying on time.

*The present regulations implement a new exemption agreed by Cabinet*

- 5 I heard concerns from BNPL providers that complying with these provisions constrains how they calculate and charge default fees to an extent that could put their businesses in jeopardy.
- 6 Accordingly, Cabinet agreed to exempt BNPL providers from complying with provisions in the Act relating to unreasonable fees (such as sections 41 and

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44A) [ECO-24-MIN-0178 refers]. This was informed by targeted consultation. This will provide more legal certainty and flexibility to BNPL providers by not limiting what costs and losses can be recovered through these fees.

7 My officials will monitor how BNPL providers charge default fees to ensure they are not excessive.

8 In addition, consumers will continue to benefit from important protections under the Act, including:

8.1 duties on lenders to assist borrowers to make informed decisions, and treat them reasonably and ethically;

8.2 a range of disclosure obligations;

8.3 the ability for borrowers experiencing financial hardship to apply to have their repayment contract varied.

### Timing and 28-day rule

9 I am seeking a waiver of the 28-day rule so that the Amendment Regulations can come into force on the date after they are promulgated in the New Zealand Gazette, 25 October 2024.

10 I consider that an early commencement of the Amendment Regulations is necessary:

10.1 to minimise the period during which BNPL providers have to comply with unduly onerous and burdensome requirements that were not designed for this type of credit product and that could jeopardise its viability;

10.2 to minimise the risk of exposure to BNPL providers of private actions if they are in breach of these fee requirements during this interim period;

10.3 to provide BNPL providers and the regulator with legal certainty on the rules they need to comply with and enforce;

11 I do not expect the Amendment Regulations to have a negative impact on the public, as other provisions in the Act and Regulations will continue to protect consumers.

### Compliance

12 The Amendment Regulations comply with:

12.1 the principles of the Treaty of Waitangi;

12.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 or the Human Rights Act 1993;

12.3 the principles and guidelines set out in the Privacy Act 2020;

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- 12.4 relevant international standards and obligations;
  - 12.5 the Legislation Guidelines (2021 edition), which are maintained by the Legislation Design and Advisory Committee.
- 13 Before making the proposed amendment regulations, I am required under section 138(1A) of the Act to:
- 13.1 have had regard to the purposes of the Act;
  - 13.2 be satisfied that the exemption would not cause significant detriment to debtors under BNPL contracts;
  - 13.3 be satisfied that compliance with the relevant provisions would, in the circumstances, require BNPL providers to comply with requirements that are unduly onerous or burdensome.
- 14 Having taken advice on the above requirements, and advice from Cabinet on exempting BNPL providers without conditions, I am satisfied that the above requirements have been met.

### **Regulations Review Committee**

- 15 I do not consider that there are grounds for the Regulations Review Committee to draw the regulations to the attention of the House of Representatives under Standing Order 327.

### **Certification by Parliamentary Counsel**

- 16 Parliamentary Counsel has certified the draft regulations as being in order for submission to Cabinet except that they will come into force earlier than the 28th day after their notification in the Gazette. This certification is also on the basis that I am recommending these regulations be made in accordance with section 138(1A) of the Act.

### **Impact Analysis**

- 17 A Regulatory Impact Assessment was prepared and submitted when policy approvals were given by Cabinet in August 2024 [ECO-24-MIN-0178 refers].

### **Publicity**

- 18 As these changes are of a technical nature and have already been publicly communicated, I do not intend to issue a press release.

### **Proactive release**

- 19 I intend to proactively release a copy of this paper, subject to redactions as appropriate, within 30 business days of decisions being confirmed by Cabinet. The paper will be published on the Ministry of Business, Innovation and Employment's website.

## **Consultation**

- 20 Officials carried out a targeted public consultation with interested parties, including BNPL providers, banks, consumer advocates and financial mentors to inform the policy decision that informed these regulations.
- 21 The Commerce Commission and FMA were consulted on the proposed regulations. The Commerce Commission and the FMA were consulted on this Cabinet paper.

## **Recommendations**

I recommend that the Cabinet Legislation Committee:

- 1 **note** that Cabinet agreed in August 2024 to exempt BNPL providers from complying with provisions in the CCCFA relating to unreasonable fees (such as sections 41 and 44A of the Act) [ECO-24-MIN-0178 refers];
- 2 **note** the Credit Contracts and Consumer Finance (Buy Now, Pay Later Exemptions) Amendment Regulations 2024 will give effect to the decision referred to in recommendation 1;
- 3 **note** that s138(1A) of the CCCFA requires that the responsible Minister be satisfied:
  - 3.1 the purposes of the CCCFA have been met;
  - 3.2 the exemption would not cause significant detriment to debtors under BNPL contracts;
  - 3.3 that compliance with the relevant provisions would, in the circumstances, require BNPL providers to comply with requirements that are unduly onerous or burdensome.
- 4 **note** the advice of the Minister for s138(1A) that this requirement has been met.
- 5 **authorise** the submission to the Executive Council of the Credit Contracts and Consumer Finance (Buy Now, Pay Later Exemptions) Amendment Regulations 2024;
- 6 **note** that a waiver of the 28-day rule is sought:
  - 6.1 so that the Credit Contracts and Consumer Finance (Buy Now, Pay Later Exemptions) Amendment Regulations 2024 will come into force on 25 October 2024;
  - 6.2 on the grounds that it minimises the period BNPL providers have to comply with unduly onerous and burdensome requirements that were not designed for this type of credit product and that could jeopardise its viability; minimises the risk of exposure to BNPL providers of private

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actions if they are in breach of these fee requirements during this interim period; and, to provide BNPL providers and the regulator with legal certainty on the rules they need to comply with and enforce.

- 7 **agree** to waive the 28-day rule so that the Amendment Regulations can come into force on 1 November 2024.

Authorised for lodgement

Hon Andrew Bayly

Minister for Commerce and Consumer Affairs

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