

Buy Now Pay Later Guidelines

December 2024



Purpose of Guidelines

1. Buy Now Pay Later contracts (**BNPL contracts**) have not previously been treated as consumer credit contracts under the Credit Contracts and Consumer Finance Act 2003 (the **Act**), because no interest or credit fees are payable, or no security interest is taken.¹ That means that lenders under BNPL contracts (**BNPL lenders**) have not been required to comply with important certification, lender responsibility and disclosure requirements and borrowers under BNPL contracts have not had the protections provided by the Act.
2. The law changed on 2 September 2024. From that date, BNPL contracts are declared to be consumer credit contracts under the Act² and BNPL lenders now need to comply with all the obligations of a lender under the Act and the Credit Contracts and Consumer Finance Regulations 2004 (the **Regulations**), unless an exemption applies.³
3. These guidelines explain:
 - 3.1 the characteristics of a BNPL contract;
 - 3.2 the obligations that BNPL lenders have under the Act;
 - 3.3 the exemptions that apply (in certain circumstances) to BNPL contracts; and
 - 3.4 the consequences of any potential breach of the requirements in the Act.
4. Except for paragraphs [1], [23] and [24] all references to the Act or any BNPL lender obligation is a reference to the law from 2 September 2024.⁴
5. These guidelines are not exhaustive and are not intended to be legally binding.

¹ Definition of consumer credit contract, section 11(1)(c).

² Regulation 5B of the Credit Contracts and Consumer Finance Regulations 2004.

³ See paragraphs [12] to [24] of these guidelines.

⁴ Paragraphs [23] and [24] relate to law reform which took effect from 1 November 2024.

What is a BNPL contract?

6. A BNPL contract is a credit contract:⁵
 - 6.1 that provides credit to enable the debtor to purchase goods or services offered by a third party;
 - 6.2 where the debtor is a natural person;
 - 6.3 where the credit is used, or intended to be used, wholly or predominately for personal, household or domestic purposes; and
 - 6.4 in respect of which the creditor or any one of their associated persons—
 - 6.4.1 is paid fees by the third party or payment services provider; or
 - 6.4.2 is required to pay an amount to the third party that is less than the amount to be repaid by the debtor.
7. It is important to note that a BNPL contract that meets the requirements listed in paragraph [6] will be a consumer credit contract even where no interest or credit fees are payable, or no security interest is taken.

What obligations do BNPL lenders have?

8. BNPL lenders must comply with all the obligations in the Act and the Regulations of a lender under a consumer credit contract unless an exemption applies.
9. The obligations on BNPL lenders include (assuming an exemption does not apply):
 - 9.1 A requirement to be certified by the Commerce Commission *before* providing a BNPL contract to a borrower after 2 September 2024. You can read more about the certification requirement in the [Fit and Proper Person certification guidance](#).
 - 9.2 An obligation to disclose information to borrowers and guarantors at different points in the lifetime of the BNPL contract and upon the occurrence of specific events. You can read more about disclosure requirements in the [Disclosure for lenders guidelines](#).
 - 9.3 An obligation to comply with the lender responsibility principles:

⁵ As defined in section 7 of the Act.

- 9.3.1 BNPL lenders must at all times exercise the care, diligence and skill of a responsible lender in any advertisement for credit or finance, before entering into a BNPL contract, and in any subsequent dealings with the borrower.⁶
 - 9.3.2 BNPL lenders must make reasonable inquiries before entering into a BNPL contract, or making a material change to that contract, to be satisfied that it is likely that the BNPL contract is affordable for the borrower.⁷
 - 9.3.3 BNPL lenders must comply with the advertising standards in the Regulations as well as ensure that any advertising is not, or is not likely to be misleading, deceptive or confusing to borrowers.⁸
 - 9.3.4 BNPL lenders must assist the borrower to reach an informed decision to enter into the BNPL contract and be reasonably aware of the full implications of entering into the agreement.⁹
 - 9.3.5 BNPL lenders must treat the borrower reasonably and in an ethical manner including when breaches of the agreement have occurred or other problems arise.¹⁰
10. The above is a summary of some of the obligations under the Act and Regulations and BNPL lenders should refer to the Act and Regulations to understand their complete obligations. Non-binding general guidance to assist compliance with the responsible lending principles is set out in the Responsible Lending Code.¹¹ Additional information is also available on the Commission's website.¹²

Due diligence obligation for directors and senior managers

11. Directors and senior managers of a BNPL lender also have a personal obligation to exercise due diligence to ensure that the lender complies with its duties and obligations under the Act.¹³ You can find out more about this obligation in our [Due diligence duties for directors and senior managers guidance](#).

⁶ Section 9C(2)(a).

⁷ Section 9C(3)(a).

⁸ Section 9C(3)(b)(i) of the Act and regulations 4AAAP to 4AAAU

⁹ Section 9C(3)(b).

¹⁰ Section 9C(3)(d).

¹¹ [Responsible Lending Code \(Version July 2024\)](#).

¹² <https://comcom.govt.nz/business/credit-providers>

¹³ Section 59B(1).

The exemptions

Exemption from suitability assessment obligations

12. BNPL lenders are exempt from the responsible lending obligation in section 9C of the Act to assess that the BNPL contract is suitable for the borrower.¹⁴
13. This means that BNPL lenders are not required to make reasonable inquiries before the BNPL contract is entered into to be satisfied that it is likely that the finance provided under the agreement will meet the borrower's requirements and objectives.

Exemption from affordability assessment obligations

14. A BNPL lender is exempt from the obligation in section 9C of the Act to assess that it is likely that the BNPL contract is affordable to the borrower (the **affordability exemption**) provided the lender meets exemption conditions relating to:
 - 14.1 comprehensive credit reporting and credit policies; and
 - 14.2 point of sale disclosure.¹⁵

Comprehensive credit reporting and credit policy conditions

15. The affordability exemption applies in relation to a **new borrower** after 2 September 2024 only if:¹⁶
 - 15.1 the BNPL lender first obtains information from a credit report (as defined in the Credit Reporting Privacy Code 2020 (the **2020 Code**)) on the borrower in a manner permitted by that code, and that report includes, where available, all of the following information:¹⁷
 - The type of credit account of the borrower.
 - The amount of credit extended to the borrower.
 - The capacity of the borrower (for example, account holder, joint account holder, or guarantor).

¹⁴ Regulation 18J.

¹⁵ Regulation 18K.

¹⁶ Regulation 3. The definition of New Borrower provides that a new borrower "means a person who on and after 2 September 2024 becomes a debtor, for the first time, with a lender under a BNPL contract between the creditor and that debtor."

¹⁷ Being all of the information set out in paragraph (e) of the definition of credit information in the 2020 Code.

- The status of the account as open or closed.
- The date the account was opened.
- If the account is closed, the date it was closed.
- Details of the credit provider.
- The credit provider's client reference number.
- The repayment history information (as defined in the 2020 Code) in relation to the account.

15.2 The BNPL lender must also provide the credit reporter with the information listed in [15.1] in relation to the new BNPL contract.¹⁸

16. If a BNPL lender proposes to increase an **existing borrower's** total credit limit, the affordability exemption applies only if:¹⁹

16.1 the lender obtains information from another credit report on the consumer in a manner provided by the 2020 Code; and

16.2 that report contains all the information listed in [15.1].

17. The affordability exemption applies to **new and existing** BNPL contracts only if, while a BNPL contract is in force, the BNPL lender also has in place at all times a credit policy that:²⁰

17.1 explains how credit report information will be used by the BNPL lender when assessing whether or not to provide credit to a borrower;

17.2 is complied with by the BNPL lender; and

17.3 is available to the Commerce Commission on request.

¹⁸ As defined in the 2020 Code.

¹⁹ Regulation 18K(5). Note a lender is not required to obtain a second or subsequent credit report in respect of the same borrower unless there is an increase to the borrower's total credit limit.

²⁰ Regulation 18K(4)(b).

Point of sale disclosure condition

18. The affordability exemption applies only if, while a BNPL contract is in force, the BNPL lender discloses to the borrower at the time of each purchase made by the borrower using a BNPL contract:²¹
 - 18.1 the dates and amount of payments required for the purchase; and
 - 18.2 details of any default fees that may be payable under the contract, including how and when those fees would become payable.
19. The disclosure must be in a manner that is clear, concise, and likely to bring the information to the attention of a reasonable person.

Limited exemption from disclosure obligation

20. A BNPL lender is, in relation to a BNPL contract, required to provide initial disclosure under section 17 of the Act.
21. There is a limited exemption from this requirement – BNPL lenders are exempt from the initial disclosure obligation to disclose a statement of the borrower’s statutory cancellation rights under section 27 of the Act. This exemption is subject to the condition that the lender instead discloses to the borrower details of its own cancellation policy.²²
22. The exemption is only from the BNPL lender’s obligation to *disclose* statutory cancellation rights (subject to the condition being met) and borrowers retain their statutory cancellation right as set out in section 27 of the Act.

Exemption from fees provisions

23. BNPL lenders are exempt from the obligation in section 41 of the Act to ensure that BNPL contracts do not contain an unreasonable credit or default fee.²³
24. In addition, BNPL contracts are exempt from section 44A of the Act which means BNPL lenders are not required to ensure default fees set out in BNPL contracts do no more than reasonably compensate the BNPL lender for any cost incurred by the lender or do not exceed a reasonable estimate of any loss incurred as a result of the borrower’s acts or omissions.²⁴

²¹ Regulation 18K(4)(a).

²² Regulation 18J.

²³ Regulation 18M of the Regulations as inserted by regulation 4 of the Credit Contracts and Consumer Finance (Buy Now, Pay Later) Amendment Regulations 2024. The exemption applies from 1 November 2024.

²⁴ Regulation 18N of the Regulations as inserted by regulation 4 of the Credit Contracts and Consumer Finance (Buy Now, Pay Later) Amendment Regulations 2024. The exemption applies from 1 November 2024.

Consequences for any potential breach

25. A failure to meet the conditions of the exemptions will mean that the relevant exemption is not applicable and the Act will apply as normal to the BNPL lender and BNPL contract.
26. A breach by a BNPL lender of the obligations under the Act will attract relevant penalties and sanctions. For information about the Commission's enforcement approach please refer to the Commission's [Enforcement Response Guidelines](#).

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