



## **CONSULTATION ON GIFT VOUCHER FEES**

### **INFORMATION NOTE**

**JULY 2018**

## **INTRODUCTION**

1. On 12 June 2018, the Government approved the drafting of the Unfair Contract Terms (Gift Vouchers) Bill 2018. The Bill proposes, first, that gift vouchers must be valid for a minimum term of five years and, secondly, that the Minister for Business, Enterprise and Innovation will have power to make Regulations to set fees for the issue and replacement of gift vouchers and for 'inactive balances' on gift vouchers (commonly referred to as dormancy or maintenance fees). The main aim of this consultation is to get information and views on gift voucher fees in order to assist the Minister in deciding on the level of fees, if any, that should apply. This Note provides background information on gift vouchers and gift voucher fees. Part 1 of the accompanying Consultation Paper seeks the inputs of consumers on gift voucher fees. Part 2 seeks the inputs of businesses and includes separate sections for businesses which do, and do not, currently apply gift voucher fees.
2. The issue of expiry dates for gift vouchers formed part of a previous public consultation on the Scheme of the Consumer Rights Bill 2015. That Scheme provided for a complete ban on expiry dates and the submissions received on the gift voucher provisions were among the factors that led the Minister for Business, Enterprise and Innovation to propose instead a five-year minimum term for gift vouchers. In the Minister's view, this strikes a fair balance between the right of consumers to receive what they, or someone close to them, have paid for and the need of businesses for commercial certainty. Though the primary focus of this consultation is on the issue of fees, views would also be welcomed on the implementation of the proposed expiry date provision and in particular on any difficulties that it might present for businesses issuing certain types of gift voucher. The final section of the Consultation Paper seeks inputs accordingly on issues raised by the proposed minimum five-year expiry date for gift vouchers.
3. The Department would encourage interested parties to provide information and submit views on the issues and questions set out in the Consultation Paper. Individuals or organisations for whom only some of the questions have relevance or who have an

exclusive or predominant interest in a specific aspect or aspects of the issues relating to gift vouchers can obviously confine their responses to those aspects or questions. While the questions in the Consultation Papers are aimed at consumer users and business issuers of gift vouchers, the Department would also welcome responses from other parties with a function or interest in the matters at issue.

4. Responses to the consultation should be sent by 31 August 2018 by e-mail to [conspol@dbei.gov.ie](mailto:conspol@dbei.gov.ie) or by post to Competition and Consumer Policy Section, Department of Business, Enterprise and Innovation, Earlsfort Centre, Lower Hatch Street, Dublin 2. Responses to the consultation will be made available on the website of the Department of Business, Enterprise and Innovation. Any material contained in responses to the consultation which respondents do not wish to be made public in this way should be clearly identified as confidential in the submission. Respondents should also be aware that submissions may be disclosed by the Department in response to requests under the Freedom of Information Act 2014. Any information that is regarded as commercially sensitive should be clearly identified and the reason for its sensitivity stated. In the event of a request under the Freedom of Information Act, the Department will consult with respondents about information identified as commercially sensitive before making a decision on such a request.

#### **GIFT VOUCHERS AND GIFT VOUCHER FEES**

5. As gift vouchers are issued by a great many individual retailers and service providers as well as by specialist gift card issuers, there is no reliable data available on the number of vouchers sold annually or on the annual value of gift voucher sales. Some industry estimates suggest however that the annual spend on gift vouchers is in the region of €600 million. A survey undertaken for the Competition and Consumer Protection Commission in 2014 found that forty-one per cent of consumers surveyed had purchased a gift voucher in the previous twelve months.<sup>1</sup> Gift vouchers are therefore an important feature of the commercial and consumer landscape for many consumers and businesses. They also receive Exchequer support from the Small Benefit Exemption

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<sup>1</sup> Competition and Consumer Protection Commission. 2016. *Annual Report 31 October 2014 to 31 December 2015*, p.24.

Scheme under which employers can give employees a tax-free gift voucher of up to €500 in a given year.<sup>2</sup>

### **Types of gift voucher**

6. Gift vouchers take a number of forms and differ among other things according to the number of outlets in which they can be used. In the great majority of cases, the retailer or service provider which issues the voucher also redeems it and the voucher can be used only to buy goods or services from that retailer or service provider. The trader issuing a gift voucher of this kind may be a small business with just one outlet such as a restaurant or a multiple with many outlets. Vouchers usable only in the outlet or outlets of the business that issued them are known as 'closed loop' vouchers.
7. 'Open loop' vouchers by contrast can be used to buy goods and services from a number of different retailers and service providers. The best known such product on the Irish market is the One4All gift card issued by the Gift Voucher Shop (GVS) which can be redeemed in over 8,000 outlets.<sup>3</sup> The FromMe2You gift card issued by Retail Excellence Ireland is accepted by over 3,500 retailers and service providers.<sup>4</sup> Other open loop vouchers have a more restricted usage, the most common being gift cards which are redeemable only in outlets in a single shopping centre or group of shopping centres. Some rural towns also operate gift voucher schemes under which vouchers can be used to buy goods or services from participating retailers and service providers in the town.<sup>5</sup>
8. Open loop gift vouchers are typically issued and redeemed through an open payment network such as MasterCard or Visa, though the One4All gift card is now self-issued through GVS Prepaid Limited. Some vouchers that are marketed as shopping centre gift cards are in fact prepaid MasterCard or Visa cards and can be used in any outlet that accepts these cards. As outlined in the next section, some open loop vouchers also

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<sup>2</sup> <https://www.revenue.ie/en/employing-people/benefit-in-kind-for-employers/valuation-of-benefits/small-benefits.aspx>

<sup>3</sup> [https://www.one4all.ie/gift-cards-online?gclid=EAIaIQobChMIi5at5IOU3AIV6LztCh2wUwp8EAAYASAAEgLCa\\_D\\_BwE](https://www.one4all.ie/gift-cards-online?gclid=EAIaIQobChMIi5at5IOU3AIV6LztCh2wUwp8EAAYASAAEgLCa_D_BwE)

<sup>4</sup> <https://www.me2you.ie/aboutus1>

<sup>5</sup> For details of one such local gift voucher, see <http://www.clonakilty.ie/clonakilty-vouchers>

'electronic money' in Directive 2009/110/EC on Electronic Money and are subject to the regulatory regimes of that Directive.<sup>6</sup> As the purpose of electronic money as defined in the Electronic Money Directive is to make payment transactions, relevant provisions of Directive (EU) 2015/2366 on Payment Service, including those on authorisation and supervision, also apply to issuers of electronic money.<sup>7</sup> The Electronic Money Directive is given effect in Ireland by the European Communities (Electronic Money) Regulations 2011 (S.I. No. 183 of 2011) and the Payment Services Directive by the European Union (Payment Services) Regulations 2018 (S.I. No. 6/2018).<sup>8</sup>

9. The format in which gift vouchers are issued also varies. Paper vouchers which once dominated are now issued mainly by small retailers and service providers such as restaurants and hair and beauty salons. The vouchers issued by larger businesses generally take the form of electronic cards, though a minority still also offer paper vouchers. Open loop vouchers usable in a range of retailers and service providers are now issued only in electronic card form. Vouchers for digital content or services issued by online traders are generally provided by e-mail in digital or virtual form rather than in physical form.
10. There is considerable variation also in the minimum and maximum amounts that can be loaded onto gift vouchers. Minimum loads range from €1 to €50 and maximum loads from €100 to €3,000. Small retailers and service providers tend to apply smaller maxima but there is also considerable variation in load values among larger traders. While some gift cards can be topped up after purchase, most do not offer this facility. With the exception of the electronic money gift cards discussed in the next section, gift vouchers are not usually refundable and cannot be exchanged for cash or other vouchers. Some retailers and service providers may give change in cash or provide a credit note for a purchase below the value of a gift card but many do not appear to do

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<sup>6</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32009L0110&from=EN> .

<sup>7</sup> Article 3(1) Directive 2009/110/EC on electronic money. Directive (EU) 2015/2366 (the Payment Services Directive 2) repealed and replaced Directive 2007/64/EU on payment services and can be accessed at <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32015L2366&from=EN> .

<sup>8</sup> <http://www.irishstatutebook.ie/eli/2011/si/183/made/en/pdf> ;  
<http://www.irishstatutebook.ie/eli/2018/si/6/made/en/pdf>

so. While most vouchers entitle the holder to purchase goods or services to the value specified on the card, some entitle the holder to avail of a particular experience such as a beauty treatment or an outdoor pursuit.

### **Electronic Money Gift Cards**

11. Though other gift voucher issuers may consider applying dormancy or issuance fees if gift vouchers are required to be valid for a minimum of five years, these fees generally apply now only to electronic money gift vouchers. In considering the issue of gift voucher fees it is important therefore to understand the special characteristics of electronic money. Directive 2009/110/EC on electronic money defines it as monetary value as represented by a claim on its issuer which is –
  - i) stored electronically, including magnetically,
  - ii) issued on receipt of funds from the purchaser,
  - iii) used for the purpose of making payment transactions as defined in Article 4(5) of the Payment Services Directive, and
  - iv) accepted as a means of payment by persons other than the issuer.

Electronic money is essentially therefore a non-cash means of payment that differs from other payment methods such as debit card (which requires a bank account) or credit card (which requires a contractual agreement).<sup>9</sup>

12. The requirement that electronic money be issued on the receipt of funds means that, unlike credit provided in advance through a credit card, the purchaser must pay in advance for an electronic money product. The Electronic Money Directive makes no express reference to gift cards or vouchers and the vouchers that come within its scope do so by virtue of being a form of prepaid payment instrument. Exempted from the scope of the Directive, however, are electronic money instruments that (i) allow the holder to acquire goods or services only in the premises of the issuer or within a limited network of service providers under direct commercial agreement with a professional issuer or (ii) can be used only to acquire a very limited range of goods or services.<sup>10</sup>

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<sup>9</sup> Central Bank. Electronic Money Institutions, <https://www.centralbank.ie/regulation/industry-market-sectors/electronic-money-institutions>

<sup>10</sup> These exemptions are provided for in Article 3(4) of the Electronic Money Directive which states that the Directive does not apply to monetary value stored on instruments as specified in Article 3(k) of Directive 2007/64/EC on Payment Services. On the repeal and replacement of Directive 2007/64/EC by Directive (EU) 2015/2366, this became Article 3(k) of the 2015 Directive. The only substantive change to the exemption effected by the new Directive was the substitution of ‘very limited range of goods or

Recital (5) of the Directive sets out the rationale for, and the scope of, these exemptions as follows:

This Directive should not apply to monetary value stored on specific pre-paid instruments, designed to address precise needs that can be used only in a limited way, because they allow the electronic money holder to purchase goods or services only in the premises of the electronic money issuer or within a limited network of service providers under a direct commercial agreement with a professional issuer. An instrument should be considered to be used within such a limited network if it can be used only either for the purchase of goods and services in a specific store or chain of stores, or for a limited range of goods or services, regardless of the geographical location of the point of sale. Such instruments could include store cards, petrol cards, membership cards, public transport cards, meal vouchers or vouchers for services ... Instruments which can be used for purchases in stores of listed merchants should not be exempted from the scope of this Directive as such instruments are typically designed for a network of service providers which is continuously growing.

Gift cards usable only in a single shopping centre are generally held to come within the scope of this exemption.<sup>11</sup> As noted in paragraph 8 however, some gift cards that are marketed as single shopping centre cards are in fact pre-paid MasterCard or Visa cards which can be used wherever those cards are accepted and constitute therefore electronic money products for the purposes of the Directive and the implementing Regulations.

13. The purpose of the Electronic Money Directive is to establish rules for electronic money instruments in order to protect the holders of such instruments from financial risks affecting electronic money issuers. With the exception of credit institutions, post office giro institutions and specified public authorities, only authorised electronic money institutions are permitted to issue electronic money. The Central Bank is the competent authority in Ireland for the authorisation and supervision of electronic money institutions. Some issuers of electronic money gift cards in Ireland, including GVS Prepaid which issues the One4All card, are authorised however by the UK Financial Conduct Authority and regulated by the Central Bank for conduct of business rules.
14. The main regulatory requirements applicable to electronic money products of

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services' for 'limited range of goods or services'.

<sup>11</sup> UK Financial Conduct Authority. 2012. *The Perimeter Guidance Manual*, Chapter 3A Guidance on the Scope of the Electronic Money Regulations, Q27 - <https://www.handbook.fca.org.uk/handbook/PERG.pdf>

relevance to the issue of gift voucher fees are the prudential rules that apply to electronic money issuers, the safeguarding requirements that apply to customer funds stored in electronic money and the provisions on the redeemability by their holders of these funds.<sup>12</sup> Under the Regulations that give effect to the Directive in Ireland, an applicant for authorisation as an electronic money institution must hold initial capital of at least €350,000 and must hold own funds of at least 2 per cent of the average outstanding money, or €350,000 if that is higher. While the safeguarding requirements under the Directive can be implemented in a number of ways, the funds stored in electronic money gift cards in Ireland are held in special segregated bank accounts.

15. The provisions of the Electronic Money Directive on the redemption of electronic money require an electronic money issuer, at the request of the electronic money holder, to redeem at any time and at par value the monetary value of the electronic money held. Redemption of the fees held in an electronic money instrument may be the subject of a fee where this is clearly stated and where redemption is requested (i) before the termination of the contract where the contract provides for a termination date or (ii) more than one year after date of the termination of the contract. Any fees charged for redemption of the funds must be proportionate and commensurate with the costs actually incurred by the electronic money issuer. The redemption fees currently charged by issuers of electronic money gift vouchers range from €8 to €10. As redemption fees are regulated under the Electronic Money Directive and the Regulations that give effect to it in Ireland, the proposed Unfair Contract Terms (Gift Vouchers) Bill excludes these fees from its scope as their inclusion would give rise to undesirable double regulation. Redemption fees are similarly outside the scope of this consultation.
16. Under Part 3 (Transparency of Conditions and Information Requirements for Payment Services) of the European Union (Payment Services) Regulations 2018, electronic

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<sup>12</sup> For a statement of the regulatory requirements that apply to electronic money institutions, see <https://www.centralbank.ie/regulation/industry-market-sectors/electronic-money-institutions/regulatory-requirements-and-guidance>. The Central Bank's Consumer Protection Code also applies to electronic money institutions.

money institutions and other payment service providers are required, among other things, to provide information on all charges payable by the payment service user to the payment service provider. This information must be provided in easily understandable words and in a clear and comprehensible manner before the user is bound by the contract. In the case of payment transactions covered by a framework contract, the information must be provided on paper or another durable medium such as e-mail. In the case of single payment transactions, the payment service provider is required to provide the information on a durable medium at the user's request. There is a derogation from some of the information requirements for specified low-value payment instruments, including pre-paid instruments which, in accordance with the relevant framework contract, concern only payment transactions not exceeding €500, have a spending limit of €500 or do not store more than €500 at any time. In these cases, the payment service provider must provide information on charges levied, the main characteristics of the payment service and other material information needed to make an informed decision together with an indication of where the other information required by the Regulations is made available in an easily accessible form.

#### **Inactive Balance or Dormancy Fees**

17. Inactive balance or dormancy fees currently apply to closed loop gift cards vouchers usable across a wide range of retailers and service providers such as the One4All and FromMe2You cards as well as to those shopping centre gift cards which are prepaid MasterCard or Visa cards and are redeemable wherever those cards are accepted. The only closed loop voucher known to the Department to which a dormancy fee currently applies is that issued by Aer Lingus. While Aer Lingus vouchers were previously valid only for 12 months, they now have no expiry date but impose a dormancy fee of €1.45 per month after 12 months. All of the dormancy fees of which the Department has knowledge apply similarly after 12 months from the issue of the gift voucher. The fees charged range from €1.40 per month (FromMe2You), €1.45 per month (One4All) to the €3 per month charge which applies to most shopping centre gift cards.
18. Dormancy fees are the most significant of the fees charged for gift vouchers in terms of their impact on the monetary valued held in vouchers. That impact is particularly

marked in the case of lower value vouchers. Where a dormancy fee of €3 per month applies after twelve months, the value of a €25 voucher will be almost entirely eroded after twenty months. A €500 voucher by contrast will take almost fifteen years to be fully eroded by a similar fee. While, as outlined in paragraph 16, there is a requirement on the providers of electronic money gift cards to which fees apply to inform the purchaser of these fees, it is in the nature of gift vouchers that the holder of the voucher is not the purchaser in many, if not most, cases. A gift voucher purchaser who is given the required information about dormancy fees may not pass that information on to the recipient of the voucher. The gift voucher survey undertaken by the Competition and Consumer Protection Commission in 2014 found that 69 per cent of gift voucher recipients had not checked for information on fees and charges.<sup>13</sup>

19. While consumers understandably feel that they should be able to redeem gift vouchers at their full face value, the providers of regulated electronic money gift vouchers to which dormancy and other fees apply point to the extra advantages and protections which this type of voucher affords. The requirement to maintain these funds in segregated accounts ensures that, leaving aside any impact of dormancy fees, the money stored in regulated instruments is protected in the event of the insolvency of the electronic money institution. In the case of unregulated gift vouchers, if the trader who issued them becomes insolvent or goes out of business, the holders of vouchers rank as unsecured creditors and are highly unlikely to get back any of the monies held in gift vouchers.<sup>14</sup> The other main advantage offered by regulated closed loop vouchers is the greater, and in some cases very much greater, range of outlets in which they can be used. As noted in paragraph 10, electronic money gift vouchers can also be redeemed for cash, a facility not available for the great majority of other gift vouchers.
20. The main cost specific to electronic money issuers arises from the requirement to keep 100 per cent of the funds held in unredeemed gift vouchers in a segregated bank

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<sup>13</sup> Competition and Consumer Protection Commission. 2016. *Annual Report 31 October 2014 to 31 December 2015*, p.24.

<sup>14</sup> Though there is no obligation on them to do so, new owners of a business that has become insolvent leaving gift vouchers unredeemed may occasionally agree to honour these vouchers. This was the case in 2013 for example after HMV had gone into administration and then receivership and the new owners, Hilco, agreed to honour outstanding vouchers issued by HMV. National Consumer Agency. 2013. *Annual Report 2013*, p. 45.

account along with the additional 2 per cent of outstanding funds necessitated by the regulatory requirements for electronic money products outlined at paragraph 14. In the current interest rate environment, electronic money institutions are also charged up to 0.5 per cent annually for maintaining funds in bank accounts. Where gift vouchers are unredeemed in whole or part, the electronic money institutions which issue them do not receive the commission from businesses when vouchers are spent that accounts for the main part of their revenues.

Though electronic money issuers receive no commission income from unredeemed vouchers, they incur costs in maintaining these funds by virtue of the right of indefinite redemption enjoyed by the holders of electronic money. Issuers of electronic money products argue consequently that these costs, and the wider costs of complying with the extensive general regulatory requirements to which they are subject, both necessitate and justify the imposition of dormancy fees. These fees are not out of line also with those charged for other forms of electronic money such as pre-paid payment cards.

### **Issuance and Redemption Fees**

21. The issuers of the One4All and FromMe2You closed loop gift vouchers charge a fee of €2 for the issue of a gift card. A small number of other gift card providers apply broadly similar issuance fees. A fee of 50 cents applies to second and subsequent One4All gift cards purchased as part of the same order. As noted at paragraph 10, most gift voucher issuers do not replace lost or stolen gift vouchers. The main providers of electronic money gift cards replace lost or stolen cards for fees ranging from €5 to €8.