



An Roinn Fiontar,  
Trádála agus Fostaíochta  
Department of Enterprise,  
Trade and Employment

# Post-Enactment Report

## Consumer Protection (Gift Vouchers) Act 2019

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Dáil Éireann Standing Order 164A  
Seanad Éireann Standing Order 168

## **Consumer Protection (Gift Vouchers) Act 2019**

### **Purpose of the Act**

The Consumer Protection (Gift Vouchers) Act 2019 was signed into law by the President on 19 November 2019 and commenced in full on 2 December 2019.

The purpose of the Act is to amend the Consumer Protection Act 2007 to provide additional protections for those who purchase or receive gift vouchers. It requires gift vouchers to be valid for a minimum term of five years and prohibits a number of unfair contract terms relating to gift vouchers. While gift vouchers are covered by the provisions of general consumer protection legislation, they were not subject to specific statutory regulation prior to the enactment of the Act. As up to half of consumers give or receive a gift voucher each year, there was a need for the introduction of targeted and balanced protections.

### **Scope of the Act**

The Act defines ‘gift voucher’ as ‘any voucher, coupon or other document or instrument, including in electronic form, that is intended to be used as a substitute for money in the payment, in whole or in part, for goods or services, or otherwise exchanged for goods or services’. It provides for the exclusion from this definition of a number of products that have some features in common with gift vouchers but which would not properly be regarded as gift vouchers and for which the provisions of the Act would be inappropriate. The sole exclusion of a product which can be a gift voucher in some cases is that relating to electronic money instruments. These instruments are subject to extensive regulation under a separate regulatory regime. The application of the Act to this type of gift voucher would serve no practical purpose as, among other things, no expiry date can apply to an electronic money gift voucher as long as a balance remains on it.

### **Policy Objectives**

#### **1. Provide for an expiry date of at least five years for gift vouchers**

Prior to the enactment of the Act, the duration of most gift vouchers varied from six months to five years. Gift vouchers issued by retailers were valid in many

cases for two years from the date of issue or of last use. A duration of one year was common in the travel and hospitality sectors.

The Act requires gift voucher contracts to contain a term –

- that the gift voucher is subject to an expiry date of at least five years from the date on which the contract was entered into, or
- that the gift voucher is not subject to an expiry date.

A trader who enters into a gift voucher contract must also specify on the gift voucher itself or on a durable medium, such as paper or e-mail, supplied with the voucher –

- the expiry date of the gift voucher, or
- the date on which the gift voucher contract was entered into and the period during which the gift voucher is redeemable, or
- that the gift voucher is not subject to an expiry date.

A survey undertaken for the Competition and Consumer Protection Commission in 2014 found that 25 per cent of those surveyed reported that they had let a gift voucher expire at some point. While restrictions resulting from expiry dates are not the sole, or perhaps even the main cause, of the non-redemption of vouchers, the holders of gift vouchers should not be prevented from redeeming them by arbitrary and unreasonably short expiry dates set unilaterally by traders. The minimum term of five years provided for in the Act strikes a fair balance between the right of consumers not to be unfairly denied the use and benefit of a gift voucher and the need of businesses for a reasonable level of commercial certainty. It was not opposed by two of the main business representative bodies, while a third such body favoured a three-year minimum term.

## 2. Prohibit contract terms that preclude the balance remaining on a partly redeemed gift voucher from being redeemed in another transaction

The Act also addresses terms found in a small number of gift voucher contracts that required the full value of a gift voucher to be redeemed in a single transaction and precluded any remaining balance on a gift voucher being redeemed in another transaction. It provides that where part of the value of a gift voucher is redeemed in a transaction and the balance remaining on the voucher is €1 or more, the trader must reimburse the remaining balance in cash, by electronic transfer or by means of another gift voucher. Where the remaining balance on a gift voucher is reimbursed by means of another gift voucher, the second gift voucher must have an expiry date no earlier than that of the original gift voucher and have a value equal to that of the remaining balance on the original gift voucher.

### 3. Contract terms requiring gift vouchers to be redeemed by a named person

Where a gift voucher contract contains a term requiring the gift voucher to be redeemed by a named person –

- the named person may redeem the gift voucher regardless of a difference between that person's name as it appears on the gift voucher and as it appears on the person's passport, driving licence or other form of personal identification, and
- the named person's name as it appears on the gift voucher may be amended or changed without a fee being charged.

### 4. Contract terms limiting the number of gift vouchers than can be redeemed in a transaction

The Act prohibits contract terms that place a limit on the number of gift vouchers that a person is permitted to redeem in a single transaction.

### 5. Replacement gift voucher to have same expiry date as original voucher

The Act provides that where a gift voucher contract provides for the replacement of a lost or stolen voucher, the replacement voucher must have the same expiry date as the original voucher. This protects consumers by ensuring that an original and a replacement gift voucher will be subject to a combined expiry period of not less than five years, while clarifying for traders that a replacement voucher will not be treated as a new voucher for the purpose of the five-year expiry date requirement.

### 6. Recipient of gift voucher has same rights under contract as its purchaser

The Act provides for an exception to the doctrine of privity of contract which restricts rights and obligations under a contract to the parties to the contract. Where a person who is a party to a gift voucher contract with a trader gives, sells or transfers the gift voucher to another person, that other person shall be entitled to exercise all rights under the gift voucher contract on the same terms as the original party to the contract.

### 7. Enforcement of the Act

The Act's provisions form a new Part 4A of the Consumer Protection Act 2007, the enforcement of which is the responsibility of the Competition and Consumer Protection Commission (CCPC). In investigating alleged contraventions of the Act, authorised officers of the CCPC have recourse to the powers set out in the Competition and Consumer Protection Act 2014. In taking enforcement action against alleged contraventions, the CCPC can have recourse to the various

enforcement options in Part 5 of the Consumer Protection Act, including prohibition orders, undertakings, compliance notices and criminal proceedings. A trader who enters into a gift voucher contract that is contrary to the provisions of the Act commits an offence and is liable on conviction to the penalties provided for in the Act.

Where a gift voucher contract contains a term that is contrary to the requirements of the Act, the Act further provides that the term will not be binding on the purchaser or recipient of the voucher.

### **Operation of the Act**

The Act was fully commenced on 2 December 2019. Its enactment and commencement was extensively covered in print, broadcast and social media. This coverage and the information campaign undertaken by the CCPC helped ensure that awareness of the Act's provisions, particularly the five-year minimum term for gift vouchers, achieved a wide reach among traders and consumers.

On the basis of the information available to it, the CCPC have not identified any concerns regarding the level of compliance by traders with the provisions of the Act. No enforcement actions were taken in relation to breaches of the Act in 2020. The Act has been incorporated into the ongoing inspection activity undertaken by the CCPC to monitor trader compliance with consumer legislation. As a result of this activity, there has been engagement with a small number of traders in relation to some provisions of the Act, but nothing warranting enforcement action has arisen to date.

The CCPC has had some 600 contacts from consumers relating to gift vouchers over the period from the Act's enactment in December 2019 to date. The main matters raised in these contacts were as follows:

- queries about the application of the Act to lost vouchers accounted for over 40 per cent of consumer queries;
- concerns about the protection of vouchers when businesses close accounted for 15 per cent of contacts;
- a number of complaints were received about alleged non-compliance by traders with the expiry date and other provisions of the Act.

The CCPC had a significant number of contacts and queries from traders at the time of the Act's commencement in December 2019 but these eased off subsequently. The queries related mainly to the inclusion or exclusion of particular types of voucher within the scope of the Act.

Any assessment of the operation of the Act and of its impact on consumers and traders must take account of the impact of Covid-19. Restrictions on the movement of consumers combined with business closures due to public health measures have affected the ability of retailers and service providers which operate wholly or largely offline to sell gift vouchers, and the ability of consumers to purchase and redeem such vouchers.

The introduction of a minimum five-year expiry period for gift vouchers in December 2019 has proved to be a positive and timely consumer protection measure in this situation. In the absence of such a provision, consumers would have experienced difficulties in some cases in redeeming vouchers with an expiry period of one year or less. The minimum five-year term for gift vouchers purchased since December 2019 will ensure that these vouchers can be redeemed when trading restrictions resulting from Covid-19 are no longer in place.