



CONSUMER PROTECTION (GIFT VOUCHERS) ACT 2019: FAQs

Does the Act apply to all gift vouchers?

The Act applies to all gift vouchers other than electronic money gift vouchers such as the One4All and FromMe2You gift cards which can be redeemed indefinitely as long as a balance remains on the gift card and are subject to separate rules under Regulations on electronic money and payment services. A number of other products that, like gift vouchers, can be used as a substitute for money in payment for goods or services are excluded from the scope of the Act, including discount coupons redeemable for a period not exceeding 3 months; vouchers and coupons supplied under the loyalty schemes operated by retailers and service providers; credit notes provided to consumers on a goodwill basis; pre-paid electricity and gas cards; and postal orders. A full list of excluded products is provided in the accompanying information note on the Act.

Does the Act apply to online or e-vouchers?

Yes. The Act applies to any voucher in electronic form that comes within the definition of 'gift voucher'. This definition is provided in the accompanying information note on the Act.

Will the five-year expiry date provision apply to vouchers sold before the Act comes into operation?

No. The five-year expiry date provision and the other provisions of the Act will apply only to vouchers sold on or after 2 December 2019 when the Act comes into operation.

I have gift vouchers in stock that were produced some time ago and which state that the gift voucher is subject to an expiry period of less than five years? Will the sale of these gift vouchers after 2 December 2019 be an offence under the Act?

It is the case that the gift vouchers and cards issued by some retailers and service providers are produced weeks or even months before their subsequent sale. While a gift voucher issued on or after 2 December 2019 which provides or states that the gift voucher is subject to an expiry period of less than five years would *prima facie* be in breach of the Act, this would not necessarily prevent traders from issuing gift vouchers produced prior to the commencement of the Act. The documentation provided with the gift voucher could include, for example, a corrective statement that, notwithstanding any other reference to the expiry date or expiry period on the gift voucher or in the associated documentation, the gift voucher will be valid for five years from the date of issue.



Enforcement of the five-year expiry date and other provisions of the Act is the responsibility of the Competition and Consumer Protection Commission (CCPC). Enforcement authorities recognise that transitional issues can arise where businesses have to make adjustments to contract terms or commercial practices when requirements contained in new legislation take effect. Provided that enforcement authorities are satisfied that there is no deliberate intention on the part of a trader to flout or circumvent such requirements, they will take appropriate account of any short-term adjustment issues that traders may face.

Will I need to change the terms and conditions of my gift voucher contract?

Most gift voucher contracts currently provide for an expiry period of less than five years. Where this is the case, the contract will have to be changed to provide that the gift voucher is subject to an expiry date of five years or more or is not subject to an expiry date. While the other terms in gift voucher contracts regulated by provisions of the Act are less common, contract terms contrary to these provisions will have to be removed or revised to ensure that the contract complies with the Act. The contract terms in question are terms –

- requiring the full value of a gift voucher to be redeemed in a single transaction,
- limiting the number of gift vouchers than can be used in a transaction,
- providing for the non-redemption of a gift voucher where the name of the gift voucher recipient differs from his or her name on a passport or other identity document or for the charging of a fee for a change of name of the recipient,
- providing that a gift voucher provided as a replacement for a lost or stolen gift voucher will have an earlier expiry date than the original gift voucher.

If a gift voucher contract contains a term that is contrary to the Act, will the gift voucher contract be void or invalid?

A term in a gift voucher contract that is contrary to the Act will not be binding on the purchaser of the gift voucher or on a person to whom the purchaser gives, sells or transfers the gift voucher. The gift voucher contract will continue to bind the parties to the contract, and any person to whom the purchaser gives, sells or transfers the gift voucher, if the contract is capable of continuing in existence without the offending term. Generally, contracts should be capable of continuing in existence without terms that are contrary to the Act. It would not be in the interests of gift voucher purchasers or recipients to have gift voucher contracts voided or invalidated in such cases.



If I buy a gift voucher from a website in another country will the voucher have the protection of the five-year expiry date requirement and the other provisions of the Act.

There is not a simple answer to this question. Under the EU Rome I Regulation on the law applicable to contractual obligations which applies to all EU Member States except Denmark, special rules on consumer contracts provide that these contracts will be covered by the law of the country where the consumer has his habitual residence provided the trader either pursues his commercial activities in, or directs those activities to, the consumer's country or to several countries including that country. While the Regulation provides that consumers may agree that a contract will be governed by the law of the trader's country, that choice cannot result in the consumer being deprived of protections applicable under the law of the consumer's country of residence such as those contained in the Consumer Protection (Gift Vouchers) Act 2019. With the exception of package travel contracts, these provisions of the Regulation do not apply however to contracts of carriage such as contracts for air, sea, rail or road travel.

The European Court of Justice has held that in order to determine whether a trader is directing its activity to the Member State of a consumer, it should be ascertained whether, before the conclusion of any contract with the consumer, it is apparent from the trader's website and overall activity that the trader envisaged doing business with consumers in that Member State in the sense that it was minded to conclude a contract with them. The matters that can constitute evidence that a trader's activity is directed to a consumer's Member State include the following:

- the use of a language or currency other than the language or currency generally used in the trader's Member State with the possibility of making and confirming orders in that language;
- the mention of telephone numbers with an international code;
- the outlay of expenditure on an internet referencing service in order to facilitate access to the trader's website by consumers in the other Member State or Member States in question; and
- the use of a domain name other than that of the Member State in which the trader is established.

The mere accessibility of the trader's website in the consumer's Member State, the provision of an e-mail address or other contract details, or the use of a language or currency generally used in the trader's Member State, do not however constitute sufficient evidence that the trader is directing his or her activities to the consumer's Member State. It is for



national courts to ascertain whether a trader has directed his activities to consumers in another Member State or States.

While these provisions of the Rome I Regulation apply to contracts between a consumer and a trader in a Member State outside the European Union, their application and enforcement is likely to prove more difficult in such cases. The UK will continue to be governed by the Regulation during any transitional period that applies after Brexit.

If I buy a gift voucher from a branch of a retailer or service provider in another country will the voucher have the protection of the five-year expiry date requirement and the other provisions of the Act if I subsequently redeem it in a branch of the retailer or service provider here?

The Act would not apply to a gift voucher in such a case as the trader would not be held to be pursuing his commercial activities in, or directing those activities to, the consumer's country of residence.