An Roinn Gnó,
Fiontar agus Nuálaíochta
Department of Business,
Enterprise and Innovation

Regulatory Impact Analysis

Consumer Protection (Gift Vouchers) Act 2019

Table of Contents

1 Summary of RIA	3
2 Statement of policy context, problem and objectives	5
3 Consultations	13
4 Policy options	15
4 Analysis of costs, benefits and impacts	20
6 Enforcement and compliance	27
7 Review mechanism	28
8 Publication	29

1 Summary of RIA

Summary of Regulatory Impact Analysis (RIA)	
Department/Office: Department of Business, Enterprise and Innovation	**Title of Legislation: Consumer Protection (Gift Vouchers) Act 2019**
Stage: Text of Act	**Date: November 2019**
Related Publications: https://dbei.gov.ie/en/Consultations/Public-Consultation-on-gift-voucher-fees-and-expiry-dates.html	
Available to view or download at: **http://www.irishstatutebook.ie/eli/2019/act/38/enacted/en/html**	

Policy Objectives
The Act aims to enhance protections for gift voucher recipients and purchasers by creating a clear and fair set of rights for gift vouchers. Its provisions seek to achieve a balance between the need to ensure that the use of gift vouchers by consumers is not subject to arbitrary time limits or unreasonable restrictions and the need of businesses for a reasonable degree of commercial certainty.

Policy Options	
1.	**No Policy Change**
2.	**Introduce Legislation**
Preferred Option: To introduce legislation.	

OPTIONS			
	No policy change		
	COSTS	**BENEFITS**	**IMPACTS**
	No additional cost to Exchequer or to businesses issuing gift vouchers. Gift voucher holders would continue to experience loss and detriment from limited expiry periods and other restrictive terms in gift voucher contracts which are not directly or effectively addressed by existing consumer legislation.	Gift card sellers could maintain their existing terms and conditions and continue to operate on the basis of existing business models.	Status quo maintained with no additional or unforeseen impacts.

	Introduction of legislation		
	COSTS	**BENEFITS**	**IMPACTS**
	There would be a cost to the Exchequer arising from the need to provide the necessary enforcement resources to the Competition and Consumer Protection Commission. This cost will depend on the level of necessary enforcement action and cannot be reliably quantified in advance.	Consumers who have received or purchased gift vouchers will not be denied the use and benefit of vouchers by contract terms providing for an expiry period of less than five years. Consumers will also be protected against a number of unfair terms in gift voucher contracts applied by some businesses. Gift voucher providers whose terms and conditions are fair and reasonable will not find themselves at a competitive disadvantage with providers who apply more restrictive terms.	Losses to businesses currently able to treat monies from unredeemed gift vouchers as revenues after expiry periods of one or two years might lead some businesses to cease issuing gift vouchers or to start imposing fees for gift vouchers. As the benefits of gift vouchers to businesses are significant, this is unlikely to occur on any significant scale in the case of vouchers issued by individual businesses or retail or other chains. The impact of a five-year expiry period may be greater on providers of shopping centre gift cards and experience gift vouchers. Any move to cease offering vouchers or to introduce fees would be a commercial decision for individual businesses or business entities. The possibility that some gift voucher providers may respond in either of these ways to a statutory five-year minimum term for gift vouchers cannot be ruled out.

4

2 Statement of policy context, problem and objectives

(i) Policy context – Gift vouchers sold in Ireland

While there are no authoritative data available on the number of gift vouchers sold each year or on the annual value of gift voucher sales, industry estimates suggest that the yearly spend on gift vouchers is in the region of €600 million. A survey undertaken for the Competition and Consumer Protection Commission (CCPC) in 2014 found that 41 per cent of consumers surveyed had purchased a gift voucher in the previous twelve months, while 47 per cent of those surveyed said they had received a gift voucher in that period.[1] A great many businesses, large and small, in a range of different sectors and activities in all parts of the country issue gift vouchers. Gift cards and vouchers are therefore an important feature of the commercial and consumer landscape for many Irish consumers and businesses.

A number of different types of gift voucher are now sold on the Irish market. The main forms taken by gift vouchers are outlined below.

1) Gift vouchers for a specified monetary value (e.g. €100) issued by a single trader or a single retail or services chain. This type of voucher is known as a 'closed loop' voucher in that it can be redeemed only by the retailer or service provider which issued it. These vouchers are supplied in either paper or electronic card form with smaller businesses generally issuing paper vouchers and larger businesses issuing cards. Online businesses typically issue e-vouchers in digital or virtual form rather than a physical card or voucher. Expiry dates for vouchers issued by a single trader or by a retail or other chain vary from six months to ten years. In the retail sector, expiry dates for vouchers issued by large retailers are valid in many cases for two years from either the date of purchase or of last use. In the hospitality and travel sectors, an expiry period of one year is common. A small number of businesses issue vouchers with expiry periods of five or ten years or with no expiry date. Where vouchers are subject to an expiry period, some traders may honour a voucher after that period on a goodwill basis. Monies from vouchers unredeemed in full or in part at the time of their expiry are treated as revenues by the business that issued them. Unredeemed or unspent funds on gift vouchers are known as 'breakage'.

2) Gift vouchers for a specified monetary value that can be used in a limited network of retailers and service providers such as a shopping centre. These products are supplied in electronic card form and are known as 'restricted loop' instruments. This type of voucher is commonly supplied and managed by a specialist gift card provider on behalf of the shopping centre or other entity. A one-year expiry period typically

[1] https://www.ccpc.ie/business/take-ouch-gift-vouchers-christmas/

applies to these gift cards. Some such vouchers provide that the expiry period can be extended for a further six months on payment of a fee, usually around €10. Revenues from vouchers unredeemed within the expiry period go, among other things, to meet the costs of providing and servicing gift cards.

3) Gift vouchers for a specified monetary value that can be redeemed across a wide range of participating retailers and service providers. These products are supplied in electronic card form and are known as ‘open loop’ instruments. The main examples of this type of voucher are the One4All gift card issued by the Gift Voucher Shop (GVS) which is accepted in 8,500 outlets and the FromMe2You card established by Retail Excellence Ireland which is accepted by over 3,000 retailers and service providers. Open loop gift vouchers are commonly issued and redeemed through a payment network such as Mastercard or Visa, though the One4All card is now self-issued through GVS Prepaid Limited. This type of gift voucher comes within the definition of electronic money in the European Communities (Electronic Money) Regulations 2011 (S.I. No. 183 of 2011) which give effect to Directive 2009/110/EC on electronic money. Electronic money issuers are subject to the Directive’s prudential requirements and electronic money gift vouchers to its provisions on the safeguarding of funds held in electronic money. As an electronic money issuer must, at the request of the electronic money holder, redeem at any time the monetary value of money held in an electronic money instrument, this type of voucher is not subject to an expiry date as long as funds remain in the electronic money instrument. Charges known as inactive balance, management, maintenance or dormancy fees apply to electronic money gift vouchers after 13 months and range from €1.40 to €3.50 per month. Fees apply also to the redemption by an electronic money holder of monies held in an electronic money instrument. The electronic money Directive and Regulations provide that redemption fees must be proportionate and commensurate with the costs actually incurred by the issuer. Electronic money instruments are subject also to the applicable provisions of Directive (EU) 2015/2366 on payment services which is given effect in Ireland by the European Union (Payment Services) Regulations 2018 (S.I. No. 6/2018).

4) A number of chambers of commerce and other bodies now operate town-based gift voucher schemes in order to help promote and sustain local businesses. These vouchers can be redeemed in participating retailers and service providers within the town or locality in question. There are currently 18 such gift voucher schemes operated by local chambers of commerce. In the case of a number of these schemes, the voucher is issued and managed as an electronic money instrument by the Gift Voucher Shop on behalf of the local chamber.

5) Gift vouchers that entitle the holder to a specified experience such as a spa treatment, a restaurant meal or a hot air balloon trip rather than to purchase goods or services for a specified monetary value. ‘Experience’ gift vouchers of this kind are typically valid for 1 to 2 years and are supplied either by individual service providers or by specialist experience voucher providers whose vouchers can be used to access a range of experiences offered by participating service providers.

(ii) Policy issue – Consumer detriment

An expiry date is the most common type of contract term that serves to limit the use of a gift voucher compared to its cash equivalent. Expiry dates are used by traders to limit ongoing liabilities from gift cards into the future, effectively passing the financial risk to the consumer. When a gift voucher expires before being redeemed at all or while an unspent balance remains on it, its holder sustains a financial loss and experiences detriment. As noted above, expiry dates for gift vouchers vary widely. These variations among different types of voucher and among vouchers issued by traders in different sectors of the economy mean that there is no reliable norm or rule of thumb for consumers when it comes to the length of time for which vouchers are valid.

Under the European Union (Consumer Information, Cancellation and Other Rights) Regulations 2013 (S.I. No. 484 of 2013), traders are required to provide information to consumers on a wide range of matters, including the duration of the contract, before consumers are bound by a contract. Detailed information requirements apply to electronic money gift vouchers under the European Union (Payment Services) Regulations 2018 (S.I. No 6 of 2018). It is now well recognised however that consumers do not always take the time to acquaint themselves with the terms and conditions applying to goods and services. The 2014 survey for the Competition and Consumer Protection Commission (CCPC) found that 29 per cent of consumers who had bought a gift voucher did not check the expiry date, 53 per cent did not check the conditions of use and 69 per cent did not check for applicable fees and charges. As it is in the nature of gift vouchers that the recipient of the voucher is not normally the purchaser to whom information on expiry dates and other matters must be given, knowledge of expiry dates and other terms and conditions is likely to be lower among the recipients of gift vouchers. It is no surprise therefore that 25 per cent of the consumers surveyed for the CCPC in 2014 reported that they had let a gift voucher expire at some point. This level of non-redemption of gift vouchers clearly results in appreciable losses to consumers. While there are no authoritative data available on the proportion of gift vouchers that go fully or partly unredeemed, industry estimates suggest that the figure is around 8-10 per cent for vouchers usable only with a single retailer or service provider and around 1-5 per cent for vouchers usable with a range of retailers and service providers. In the latter case, the proportion of vouchers not redeemed at all appears to be generally in the region of 1 per cent. Breakage rates tend to be higher for ‘experience’ gift vouchers in view of the fact they are often restricted to a single service or product and require the voucher holder to find the time to avail of the experience concerned. Failure to redeem a gift voucher is due in some cases to the fact that its holder has lost, mislaid or simply forgotten about it. In other cases, vouchers will no longer be usable where the issuing business becomes insolvent or ceases trading. A minimum expiry period for gift vouchers will not address losses sustained by consumers for these reasons. It would however tackle loss and detriment to consumers arising from unreasonably restrictive expiry periods imposed by gift card issuers.

While restrictive expiry periods are the main source of detriment experienced by consumers in relation to gift vouchers, other terms and conditions can also limit the ability of consumers to use gift vouchers in line with reasonable expectations about their use. These include terms which require gift vouchers to be used in full in a single transaction, that limit the number of vouchers which can be used in a transaction, or which render a voucher invalid where the name of the recipient provided by the purchaser does not exactly correspond to the name of the recipient on a specified identity document such as a passport.

(iii) Policy background

While gift vouchers are subject to general consumer protection legislation such as the Consumer Protection Act 2007 and the European Communities (Unfair Terms in Consumer Contracts) Regulations 1995, there are no specific statutory provisions regulating the supply of vouchers. As noted above, gift vouchers that come within the definition of 'electronic money' are subject to the Regulations that give effect to the Electronic Money and Payment Services Directives.

Scheme of Consumer Rights Bill 2015

In response to concerns about consumer detriment arising from expiry dates on gift vouchers, the Scheme of the Consumer Rights Bill issued for public consultation in May 2015 by the then Minister for Jobs, Enterprise and Innovation, Richard Bruton T.D., contained a number of provisions for the regulation of gift vouchers, including a proposed ban on expiry dates in contracts for the supply of gift vouchers.[2] The subsequent progress of the Scheme was halted by the publication by the European Commission later in 2015 of legislative proposals on consumer sales and digital content contracts which overlapped substantially with two of the four main Parts of the Scheme. The view was taken that there was little advantage for consumers or businesses in proceeding with a legislative proposal that would have to be heavily amended within a relatively short time of its enactment. The two EU legislative proposals took considerably longer than expected to progress and were not adopted until April 2019. In view of the delay affecting the proposed Consumer Rights Bill, the Minister for Business, Enterprise and Innovation, Heather Humphreys T.D., decided in 2018 to proceed with separate standalone legislation on gift vouchers.

Private Members' Bills on gift vouchers

The Consumer Rights (Gift Vouchers) Bill 2017 introduced by Deputies Catherine Murphy and Róisín Shortall on 21 November 2017 provides, first, for a minimum term of

[2] https://dbei.gov.ie/en/Consultations/Consultation-on-the-Scheme-of-a-proposed-Consumer-Rights-Bill.html

five years for gift vouchers and, secondly, for a ban on fees for (i) the issue of a gift voucher, (ii) an inactive balance on a voucher (dormancy or management fees) or (iii) the repayment to the consumer of a credit balance on a voucher (redemption fees).[3] The Consumer Protection (Amendment) Bill 2017 introduced by Deputy Niall Collins on 28 November 2019 provides for a minimum five-year term for gift vouchers and for a number of information requirements for gift vouchers.[4] Deputy Collins's Bill had its second reading in Dáil Éireann on 21 June 2018 and was scrutinised by the Joint Committee on Business, Enterprise and Innovation on 2 October 2018. In its Scrutiny Report of February 2019 on the Bill, the Committee endorsed the Bill's aims and recommended increased regulation of gift vouchers, particularly around expiry dates.[5]

Government decision June 2018

On 12 June 2018, the Government approved the drafting of the Unfair Contract Terms (Gift Vouchers) Bill. The draft General Scheme of the Bill provided first, that gift vouchers must be valid for a minimum term of five years and, secondly, that the Minister for Business, Enterprise and Innovation would have power to set fees for the issue and replacement of gift vouchers and for inactive balances on gift vouchers (dormancy or management fees). Following the Government decision, a public consultation on gift voucher fees and expiry dates was launched on 19 July 2018.[6]

Legal issue regarding proposed regulation of gift voucher fees

During the subsequent drafting of the Bill, the Office of the Attorney General (AGO) expressed concern in legal advice that the proposed provision on the regulation of fees for electronic money gift vouchers risked possible incompatibility with the maximum harmonisation nature of the Electronic Money Directive. As electronic money products were already subject to a separate regulatory regime, it was necessary furthermore to identify the extent of any regulatory overlap that would result from the Bill's application to electronic money gift vouchers and to ensure that any double regulation would not give rise to problems for electronic money issuers and regulators. The AGO advised accordingly that consultations on the matters at issue should take place with the Department of Finance which has policy responsibility for electronic money and with the Central Bank which has regulatory responsibility for electronic money. Both bodies indicated that they shared the concerns of the Office of the Attorney General about the possible incompatibility of the proposed fee-regulating power with the Electronic Money Directive. In view of the legal advice from the AGO and its endorsement by the

[3] https://data.oireachtas.ie/ie/oireachtas/bill/2017/138/eng/initiated/b13817d.pdf
[4] https://data.oireachtas.ie/ie/oireachtas/bill/2017/143/eng/initiated/b14317d.pdf
[5] https://data.oireachtas.ie/ie/oireachtas/committee/dail/32/joint_committee_on_business_enterprise_and_innovation/submissions/2019/2019-02-06_report-on-the-scrutiny-of-the-consumer-protection-amendment-bill-2017-pmb_en.pdf
[6] https://dbei.gov.ie/en/Consultations/Public-Consultation-on-gift-voucher-fees-and-expiry-dates.html

Department of Finance and the Central Bank and as fees for gift vouchers are limited to electronic money instruments, the Minister for Business, Enterprise and Innovation concluded that the proposed provision on the regulation of fees should be withdrawn from the Bill. As electronic money instruments are effectively subject to no expiry date, it was further decided to exclude this type of voucher entirely from the scope of the Bill. In May 2019, the Minister wrote to Vice-President Dombrovskis, the European Commissioner with responsibility for the Electronic Money Directive, to inform him of her concerns in the matter and of the need to review the Directive to provide that the Directive should either directly regulate these fees or permit Member States to do so in national legislation. In reply, Vice-President Dombrovskis stated that he fully appreciated the legitimate concerns expressed by the Minister about the consequences for consumers of the current situation and that these concerns would be taken into account in any future review of the Directive.

Consumer Protection (Gift Vouchers) Bill 2018

On 18 December 2018, the Government approved the publication of Consumer Protection (Gift Vouchers) Bill 2018.[7] The change in the Bill's title followed advice from the Office of the Parliamentary Counsel that it was preferable for its provisions to be incorporated in the Consumer Protection Act 2007. The Bill omitted the fee regulation provision included in the Scheme of the Bill approved for drafting by the Government in June 2018, but included two additional provisions addressing potentially unfair terms relating to gift vouchers which had come to light during the public consultation initiated in July 2018. The first of these provisions deals with gift vouchers that require the full value of the voucher to be redeemed in a single transaction. The second deals with cases where gift vouchers are rendered invalid if the name of the recipient differs from his or her name on specified documentation such as a passport or where a fee is charged to alter or amend the name of the recipient.

The Bill was initiated in Seanad Éireann on 19 December 2018, completed Second Stage there on 23 January 2019, and passed all remaining stages without amendment on 31 January 2019. Its Second Stage commenced in Dáil Éireann on 12 February 2019 and concluded on 14 February with the Bill's referral to the Joint Committee on Business, Enterprise and Innovation.

The Minister for Business, Enterprise and Innovation did not move any amendments to the Consumer Protection (Gift Vouchers) Bill at Committee Stage in Seanad Éireann nor were any amendments moved by Senators. The Minister moved a number of amendments at Committee Stage in Dáil Éireann in response to issues that emerged subsequent to the publication of the Bill in the course of the drafting of amendments by the Office of the Parliamentary Counsel and in discussions with stakeholders. Most of these amendments are technical in nature. A number of amendments that reformulate the provisions in contract law terms rather than in terms of commercial practices were

[7] https://data.oireachtas.ie/ie/oireachtas/bill/2018/142/eng/initiated/b14218s.pdf

made in response to legal advice that formulating the provisions in terms of commercial practices could risk legal challenge on the grounds of incompatibility with Directive 2005/29 on unfair commercial practices. While that Directive is a maximum harmonisation instrument, Directive 93/13/EEC on unfair terms in consumer contracts is a minimum harmonisation instrument that permits Member States to provide for additional protections in national legislation. The definition of 'gift voucher' has been amended to exclude a number of products such as transport and utility cards and postal orders that share some characteristics with gift vouchers but to which the protections of the legislation would be inappropriate. Electronic money instruments, including electronic money gift vouchers such as the One4All and FromMe2You gift cards, are also excluded from the scope of the definition in the light of the legal advice from the AGO and the views of the Department of Finance and the Central Bank referred to earlier. Other technical amendments seek to clarify the application of the provisions concerned. The counterparty to the trader who supplies the gift voucher under a gift voucher contract is now referred to as a 'person' rather than, as in the original Bill, a 'consumer', in recognition of the fact that many businesses purchase vouchers to give to their employees and that these employees would not be regarded as 'consumers' under the standard definition of that term in consumer protection legislation. Other technical amendments seek to clarify aspects of the application of the provisions to which they relate in order to avoid legal uncertainty and unintended consequences. In section 66A(2)(a) of section 2, for example, the exclusion from the definition of 'gift voucher' of vouchers redeemable for the purchase at a discounted price of specified goods or services for a period of limited duration now provides that this period should not exceed 3 months.

There are three substantive amendments to the provisions in the Bill as initiated in December 2018. The first of these is a prohibition on contract terms that place a limit on the number of gift vouchers that can be used in a single transaction. Where such a contract term applies, a consumer with two €100 vouchers who wishes to purchase goods or services for €200 from the trader who issued the voucher would be permitted to use only one of the vouchers. In the Minister's view, a contract term of this kind is unfair and anti-consumer. The second substantive amendment 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. As gift vouchers of their nature are purchased in order to be given to a third party, this provision is necessary in order to ensure that gift voucher recipients are not precluded from exercising the rights that apply under the gift voucher contract. The third such amendment provides that where a gift voucher contract provides for the replacement of a lost or stolen voucher, the replacement voucher should have the same expiry date as the original voucher. In the Minister's view, this provision will protect 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 minimum term requirement.

Legislation in Other Jurisdictions

To the Department's knowledge, gift vouchers are subject only to general consumer protection laws in other EU Member States and are not regulated by additional statutory provisions specific to vouchers. This may reflect the fact that the gift card market appears to be less well developed in many other European countries. In the United States, gift vouchers must be valid for at least five years under Title IV of the Credit Card Accountability, Responsibility and Disclosure Act of 2009.[8] Additional provisions on expiry dates, information requirements and gift voucher fees apply in a significant number of US States.[9] Expiry dates are prohibited in California, Florida and several other States. A number of US States also have escheat laws which require monies from unredeemed gift vouchers to be transferred to the State after a specified number of years. Most Canadian provinces ban expiry dates for gift vouchers and some also prohibit gift voucher fees.[10] In Australia, gift cards must be valid for at least 3 years under an amendment to the Competition and Consumer Act 2010 introduced in 2018 which also bans post-supply fees for gift vouchers.[11] Regulations made under the Act may provide however that these provisions do not apply to certain prescribed gift cards.

(iv) What are the policy objectives being pursued?

While gift voucher transactions are subject to the protections afforded by general consumer legislation and the holders of electronic money gift cards enjoy additional protections, the lack of regulation of expiry dates for gift vouchers in particular means that consumers in possession of vouchers are not as well protected as they should be. The reforms proposed in the Act aim to ensure that consumers holding gift vouchers can have confidence that vouchers are not subject to arbitrary or unreasonably short expiry periods set by traders and can be used for a known, legally guaranteed length of time. The minimum term of five years for gift vouchers 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 voucher purchased for them and the need of businesses for a reasonable level of commercial certainty. The Act also addresses a number of anti-consumer terms in gift voucher contracts that came to the attention of the Minister for Business, Enterprise and Innovation during the public consultation of July-August 2018 on gift voucher fees and expiry dates. Legislating for a minimum expiry period for gift vouchers and prohibiting certain restrictive terms and conditions applied to gift vouchers by traders will help to simplify matters for consumers in relation to the various types of gift vouchers on the market and to create a clear and balanced framework of consumer rights for gift voucher contracts.

[8] Title IV of the Credit Card Accountability, Responsibility and Disclosure Act of 2009
[9] http://www.ncsl.org/research/financial-services-and-commerce/gift-cards-and-certificates-statutes-and-legis.aspx
[10] https://www.canada.ca/en/financial-consumer-agency/services/payment/gift-cards.html
[11] https://www.legislation.gov.au/Details/C2018A00133

3 Consultations

2015 Consultation

The issue of expiry dates for gift vouchers formed part of a public consultation on the Scheme of the Consumer Rights Bill launched in May 2015. That Scheme provided among other things for a complete ban on expiry dates for gift vouchers. In their responses to the consultation, businesses which issued gift vouchers, or which provided services to businesses issuing vouchers, expressed concern about the proposed ban on expiry dates. In their view, such a ban would expose businesses to indefinite liabilities in a way that was commercially harmful and would give rise to accounting difficulties. Account has been taken of these concerns and the Act provides instead that gift vouchers should be valid for a minimum term of five years from the date of their supply. In the Minister's view, an expiry period of this duration will ensure that businesses do not face indeterminate liabilities and provide consumers with adequate protection as a voucher unredeemed after five years is highly unlikely to be tendered after this length of time.

2018 Consultation

A further public consultation on gift voucher fees and expiry dates was launched on 19 July 2018 following the Government's approval for the drafting of the Unfair Contract Terms (Gift Vouchers) Bill. While the primary focus of the consultation was on gift voucher fees, views were also sought on the implementation of the proposed five-year expiry date provision and in particular on any difficulties this might present for businesses.

23 signed responses to the consultation were received from consumers. The main points to emerge from these responses were as follows:

- 14 respondents were supportive of a five-year minimum term or a ban on expiry dates;
- 1 respondent thought that a five-ear expiry period was too long and favoured a two-year period instead;
- 6 respondents stated that the fees which currently apply to electronic money gift vouchers were reasonable given the extra protections offered by this type of voucher;
- 1 respondent raised the issue of restrictions on the use of gift vouchers – these restrictions were also highlighted in media coverage of the issue in response to the public consultation.

Submissions were also received from the Consumers' Association of Ireland, the Competition and Consumer Protection Commission (CCPC) and Niall Collins T.D. The Consumers' Association favoured a six-year minimum term for gift vouchers while the CCPC supported the proposed five-year term. In line with his Private Members' Bill, Deputy Collins also endorsed a five-year minimum term.

20 responses were received from businesses which issue gift vouchers or which provide technical, processing or management services to businesses issuing vouchers. A further six

submissions were received from business representative bodies. The majority of business respondents favoured the exclusion of electronic money gift vouchers from the scope of the proposed legislation. Chambers Ireland which represents 43 affiliated chambers of commerce stated that five years was a reasonable expiry period for gift vouchers. Retail Ireland which represents retailers with over 3,000 outlets indicated that they were not opposed to the proposed five-year minimum term. Retail Excellence Ireland favoured a three-year expiry period. A number of other respondents, principally the providers of shopping centre gift cards whose revenues derive principally from gift vouchers unredeemed in full or part within the twelve-month expiry period standard for such vouchers, were opposed to the proposed five-year minimum term. Officials of the Department of Business, Enterprise and Innovation met with a number of stakeholders following the public consultation of July-August 2018 and also following the publication of the Consumer Protection (Gift Vouchers) Bill in December 2018.

4 Policy options

Option 1 No Policy Change

Under this option, gift vouchers would remain subject to general consumer protection legislation but no statutory provisions specific to gift vouchers would be introduced. As noted in Part 3, this is the position in most, if not all, EU Member States. With the exception of gift vouchers within the scope of the Electronic Money Directive, businesses issuing gift vouchers would remain free under this option to determine the duration of the period for which vouchers would be valid. The provisions of general consumer protection legislation of particular relevance to gift vouchers are outlined below.

<u>European Communities (Unfair Terms in Consumer Contracts) Regulations 1995, 2000, 2013 and 2014 (S.I. No. 27 of 1995; S.I. No. 307/2000; S.I. No. 160/2013; and S.I. No. 336/2014)</u>

These Regulations give effect to Directive 93/13/EEC on unfair terms in consumer contracts and apply to any term in a contract between a seller of goods or supplier of services and a consumer which has not been individually negotiated. The Regulations provide that a contract term shall be regarded as unfair if, contrary to the requirement of good faith, it causes a significant imbalance in the parties' rights and obligations under the contract to the detriment of the consumer. A contract term shall not of itself be considered unfair however by relation to the definition of the main subject matter of the contract or to the adequacy of the price and remuneration as against the goods and services supplied insofar as these so-called 'core' terms are in plain, intelligible language. Schedule 2 of the Regulations sets out guidelines for the application of the test of good faith while Schedule 3 contains an indicative and non-exhaustive list of contract terms which may be regarded as unfair. An unfair term in a contract concluded with a consumer by a seller or supplier is not binding on the consumer, but the contract will continue to bind the parties if it is capable of continuing without the unfair term. Enforcement of the Regulations rests with the Central Bank for consumer contracts with regulated financial services providers, with ComReg for consumer contracts with providers of electronic communications networks and services and of premium rate services, and with the Competition and Consumer Protection Commission for all other consumer contracts. These bodies, along with a consumer organisation as defined in the Regulations of 2000, can apply to the Circuit Court or the High Court for a declaration that a term drawn up for general use in a consumer contract is unfair and may be granted an order prohibiting the use of such a term. They may also apply for an injunction against any seller or supplier using, or recommending the use of, a contract term that the enforcement body considers to be an unfair term.

A plausible case can be made that expiry periods which prevent the redemption of gift vouchers after a period of six months or one or more years could be considered unfair by reference to the test of unfairness in the Directive and Regulations. It might first have to be considered however whether an expiry date contract term was a core term exempt from assessment for unfairness. A similar argument can be made about the unfairness of the term found in some gift voucher contracts that require the full value of a gift voucher to be redeemed in a single transaction, preclude the use of more than one voucher in a transaction, or provide that gift vouchers are invalid where the name of the recipient differs from his or her name on specified documentation such as a passport. Despite the fact that contract terms of this kind have been present in consumer contracts for a considerable time, they have not been found unfair as yet by an Irish court nor has any application been made to a court for a declaration of their unfairness.

Consumer Protection Act 2007

The Act gives effect to Directive 2005/29/EC on unfair business-to-consumer commercial practices. The Directive and the Act regulate unfair, misleading and aggressive advertising, marketing and related practices directed at consumers and can be seen as the counterpart in these areas of the Directive and Regulations on unfair contract terms in the contract law sphere. ‘Commercial practices’ cover consumer transactions for all goods and services, including gift vouchers, and are defined broadly as ‘any conduct (whether an act or omission), course of conduct or representation by the trader in relation to a consumer transaction, including any such conduct or representation made or engaged in before, during or after the transaction’. ‘Consumer transaction’ is defined as ‘a promotion or supply of a product to a consumer’. Enforcement of the Act rests with the Central Bank for business-to-consumer commercial practices by regulated financial providers and with the Competition and Consumer Protection Commission for commercial practices in all other sectors. While the Act provides important protections for consumers against unfair, misleading and aggressive commercial practices, it is not clear that finite expiry periods or other restrictions on the use of gift vouchers would contravene its provisions provided consumers were not given false or misleading information about these matters or were not subject to harassment, coercion or undue influence that impaired their freedom of choice or conduct in transactions for gift vouchers. To the Department’s knowledge, no enforcement action has been taken under the Act in respect of commercial practices involving gift vouchers.

The European Union (Consumer Information, Cancellation and Other Rights Regulations) 2013 (S.I. No. 484/2013)

As noted in Part 2, these Regulations and the Consumer Right Directive to which they give effect require traders to inform consumers about a wide range of matters, including the main characteristics of goods or services and the duration of the contract, before a consumer is bound by a contract. Detailed information requirements, including on any applicable fees, apply under the Payment Services Directive and Regulations to the electronic money gift vouchers that are outside the scope of the Consumer Rights Directive and Regulations.

It is sometimes claimed that detriment experienced by consumers in gift voucher and other transactions results mainly from information deficits and from the failure of consumers to take reasonable steps to look after their own interests. If consumers are clearly and fully informed about matters such as expiry dates and gift voucher fees, they will be in a position to ensure that vouchers are used before they expire or become subject to dormancy or management fees. The great majority of consumers manage to redeem gift vouchers in full within the applicable expiry period and consumer legislation should not necessarily have to provide additional protections for those who fail to do so.

The survey evidence cited in Part 2 shows however that even where businesses provide information about gift voucher expiry dates, conditions of use and applicable fees, many consumers who purchase vouchers admit to being unaware of these terms and conditions. As information about these matters must be given by traders to the purchasers of gift vouchers rather than to their subsequent recipients, even lower levels of awareness can be expected among gift voucher holders. These information gaps exist despite the yearly campaigns by the CCPC and some gift voucher providers advising consumers to familiarise themselves with the terms and conditions applying to vouchers and to ensure that vouchers are used in good time. More fundamentally, the provision of information about a contract term or a commercial practice that unfairly advantages traders over consumers will not make such a contract term or commercial practice fair or acceptable. There needs to be substantive fairness in these respects as well as compliance with procedural requirements on the provision of pre-contractual information.

In addition to information requirements, the Consumer Rights Directive and Regulations provide that consumers have the right to cancel distance and off-premises contracts for gift vouchers within 14 days of the conclusion of the contract. While the Directive and Regulations do not apply to electronic money gift vouchers that come within the definition of 'financial services', a similar cancellation right applies to distance contracts for such vouchers under the Regulations that give effect to Directive 2002/65/EC on distance marketing of consumer financial services. While the cancellation right afforded by these Directives is of considerable value to consumers, it is arguably of less benefit for gift voucher transactions than for some other types of consumer transaction. Other than in the case of gift vouchers for digital products and online businesses, most gift voucher contracts are still concluded on an in-store or other face-to-face basis and the right to cancel the contract does not apply to contracts concluded in this way. Even where the right applies, it is likely to be less widely availed of for gift voucher contracts than in cases where the consumer needs to be able to inspect and assess a product after delivery or has been caught off-guard in a transaction conducted in a place other than the trader's business premises. Gift vouchers are generally a considered purchase whose nature and purpose is well understood by purchasers and the level of recourse to the right to cancel online or other gift vouchers covered by the right is likely to be significantly lower as a result than for some other types of consumer contract.

Restricted Scope of Consumer Protection Legislation

In considering whether existing consumer protection legislation affords sufficient protections to gift voucher purchasers and recipients, it is important to keep in mind that, with the exception of the Electronic Money Regulations, the scope of this legislation is limited to contracts and transactions between traders and consumers. A significant and, it would appear, growing part of the gift voucher market is accounted for however by gift vouchers provided by employers to employees. The growth in the provision of these vouchers is due in substantial part to the Small Benefits Exemption Scheme which permits employers to give their employees tax-free non-cash benefits of up to €500 per year.[12] Tax-free vouchers or benefits provided under the Scheme can be used only to purchase goods or services and cannot be redeemed for cash. As employees given vouchers by their employer would not generally be considered to be consumers within the standard meaning of that term in consumer legislation, the likelihood is that these vouchers do not currently enjoy the protections of consumer legislation.

The European Communities (Electronic Money) Regulations 2011 and the European Union (Payment Services) Regulations 2018 (S.I. No. 6 of 2018)

These Regulations give effect to the Electronic Money and Payment Services Directives. As noted in Part 2, open loop gift vouchers redeemable in a non-limited network of retailers or service providers come within the scope of the prudential and safeguarding provisions of the Electronic Money Directive and its requirement for the indefinite redemption of funds held in electronic money. These vouchers are subject also to the applicable provisions of the Payment Services Directive, including detailed information requirements. The Central Bank is responsible for enforcement of both Regulations. As the Act excludes from its scope gift vouchers that come within the definition of electronic money, this type of voucher will continue to be regulated by the Regulations on electronic money and payment services.

Option 2 Introduction of Legislation

This option would see legislation enacted to implement the Government decision to provide greater protections for consumers who receive or buy gift vouchers. The Consumer Protection (Gift Vouchers) Act 2019 aims accordingly to increase consumer protections in respect of gift vouchers by amending the Consumer Protection Act 2007. It provides for the addition of a new Part 4A to the 2007 Act which would provide for a five-year minimum expiry term for gift vouchers and require traders to inform consumers of the expiry date, if any, to which a gift voucher is subject on the voucher or on a durable medium provided with it. The Act further provides for the prohibition of terms in contracts for the supply of gift vouchers that require the full value of a gift voucher to be redeemed in a single transaction, limit the number of gift vouchers that can be used in a single transaction, or stipulate that gift vouchers are invalid where the name of the recipient on the voucher differs from his or her name in specified documentation such as a passport or provide for a charge for amending or changing the name of the consumer named on the voucher.

The introduction of these legislative provisions is justified in order to tackle loss and detriment to consumers resulting from arbitrary and unreasonably short expiry dates and from other restrictive provisions in gift voucher contracts. Giving traders the exclusive right to determine the period of validity of gift vouchers is not conducive to fair and balanced outcomes for consumers. The wide variation in expiry dates means that consumer are not in a position to have well-grounded expectations about the length of time for which vouchers

[12] https://www.revenue.ie/en/employing-people/benefit-in-kind-for-employers/valuation-of-benefits/small-benefits.aspx

are valid. The proposed five-year expiry period for gift vouchers strikes a reasonable balance between the respective interests and needs of businesses and consumers. It is supported or not opposed by two leading business groups, Retail Ireland and Chambers Ireland, and has the backing of the Competition and Consumer Protection Commission and the Consumers' Association of Ireland and of the majority of consumer respondents to the recent public consultation on gift voucher fees and expiry dates. The other restrictive terms addressed by the Act are contrary to well-established norms of fair dealing in consumer transactions. Though existing consumer protection legislation gives consumers significant protections in respect of gift voucher contracts and transactions, it does not deal directly or effectively with the contract terms regulated by the Act. In addition, existing consumer legislation almost certainly does not regulate the sizeable number of gift vouchers given by employers to employees. In addition to improving protections for consumers, the proposed legislation will help to ensure that gift voucher providers whose terms and conditions are fair and reasonable will not find themselves at a competitive disadvantage with providers who apply more restrictive terms.

The legislation seeks to provide these protections in a proportionate and targeted way. Its definition of 'gift voucher' expressly excludes a number of products which share some characteristics with gift vouchers but for which the Act protections are unnecessary or would be inappropriate or unjustified. These include vouchers that can be used to purchase specified goods or services at a price discount for a specified period of limited duration not exceeding three months, vouchers supplied under a customer loyalty or promotional scheme, and vouchers supplied on a goodwill by a trader by way of a refund for goods returned by the consumer to the trader. As noted in Part 2, the Act also excludes electronic money instruments from its scope in order to avoid overlap with the existing regulatory regime for these instruments and possible conflict with the maximum harmonisation nature of the Electronic Money Directive.

4 Analysis of costs, benefits and impacts

Option 1 No policy change

Costs

There would be no cost to the Exchequer if this option is adopted. Traders would not incur any additional costs. Consumers who fail to redeem a gift voucher in full or in part within the expiry period set by the trader would continue to experience loss and detriment. The extent of this loss or detriment cannot be reliably estimated due to differences in redemption levels for different types of vouchers and to the fact that vouchers go unused for reasons other than the lapse of their expiry date. As noted in Part 2, redemption levels for 'experience' gift vouchers tend to be lower than for other types of voucher given their restriction in many cases to a single product or service and the need for voucher holders to find time to avail of the experience covered by the voucher. Consumers affected by the other restrictions on the use of gift vouchers addressed in the Act would continue to experience detriment as a result of these restrictions. While the restrictive terms in question are applied by a relatively small number of traders, they are unfair to consumers and may put rival businesses which do not apply similar restrictions at a competitive disadvantage.

Benefits

If the current legislative provisions governing gift vouchers remain unchanged, businesses issuing gift vouchers would remain free to determine expiry periods and, subject to compliance with applicable consumer legislation, other terms and conditions in gift voucher contracts. It would remain at the discretion of the business whether or not to honour gift vouchers tendered after their expiry date.

Option 2 Introduction of legislation

Costs to State

There will be a direct cost to the Exchequer arising from the need to provide the necessary resources to the Competition and Consumer Protection Commission for the enforcement of the legislation. This cost will depend on the level of necessary enforcement action and cannot be reliably quantified in advance.

Costs and benefits to consumers of five-year expiry date and other provisions

The enactment of a statutory minimum five-year term would benefit consumers and prevent the loss and detriment that currently arise where consumers are unable to redeem, in whole or in part, vouchers with an expiry period of less than five years. The scale of this benefit cannot be reliably estimated due to the wide variations in current expiry periods, the differences in redemption levels for different types of vouchers and the fact that vouchers go unredeemed for reasons other than the lapse of their expiry date. A US study undertaken in 2015 suggested that the introduction in federal legislation of a minimum five-year term for gift vouchers in 2010 had had significant benefits for consumers.[13] It found that the amount of money left unspent on gift cards had decreased from $7 per $100 in 2008 to less than $0.75 per $100 in 2015.

The argument is sometimes made that longer expiry periods for gift vouchers are not in the best interest of consumers in that they increase the risk that those in possession of vouchers will lose, mislay or forget about them. Longer expiry periods may also increase the risk that the business which issued the voucher will become insolvent or cease trading. As consumers rank as unsecured creditors in insolvencies, they commonly receive little or nothing in insolvency situations for monies held in vouchers. To the Department's knowledge, however, there is no empirical evidence that longer expiry periods are a direct cause of lower redemption levels. While, as the CCPC consistently advise, consumers should use gift vouchers without delay, this will not always be possible for a range of reasons. While legislation cannot assist consumers who fail to redeem gift vouchers due to their own inaction, it can justifiably be used, as is now the case in Australia, Canada and the United States, to protect gift voucher holders from arbitrary or unreasonably short expiry periods.

The other restrictions on the use of gift vouchers addressed by the Act are clearly not in the interest of gift voucher recipients or purchasers. Though these restrictions are not widespread at present, their prohibition will benefit consumers who would have sustained future detriment as a result of their application. The prohibition of the restrictive contract terms in question will also remove any competitive advantage enjoyed by businesses which apply these restrictions and remove any competitive pressure that might exist on other businesses to introduce similar restrictions.

Costs and benefits to business of proposed five-year expiry period provision

When existing statutory rights for consumer are enhanced or extended or new rights introduced, one-off transitional costs are likely to arise for businesses where there is a consequential need to review and revise contract terms and conditions. Informing and training staff about new or amended rights for customers may also give rise to one-off costs. Accounting rules and systems may also need to be reviewed in order to determine how gift card liabilities are to be accounted for in response to an extension in expiry periods. Businesses that use electronic systems to supply and manage their gift card schemes may also have to update their IT and payment systems if their gift cards are currently subject to an expiry period of less than five years. Stocks of gift cards prepared prior to the coming into force of the proposed expiry date provisions may possibly also have to be replaced in some cases.

While businesses will understandably focus on the costs arising from changes to expiry dates and other contract terms governing gift vouchers, it is important to bear in mind the significant benefits of gift vouchers to businesses. In addition to breakage revenues where gift vouchers are not redeemed at all or in full, there is a cash flow benefit to businesses during the period between the issue of a voucher and its redemption. Gift vouchers have also been shown to increase consumer spending on the goods or services of businesses that issue them. A survey of 2,000 consumers undertaken in 2018 for the UK Gift Card and

[13] https://www.cebglobal.com/content/dam/cebglobal/us/EN/best-practices-decision-support/financial-services/images/infographics/gift-cards-growth-and-risk-in-2015.pdf

Voucher Association found that two-third of respondents reported that they spent more than the value of vouchers when redeeming them.[14] The average extra expenditure amounted to two-thirds of the value of the voucher. Almost one-in-five respondents also claimed to have become a regular customer of a new retailer or brand after being given a gift voucher for that retailer or brand.

It should not be assumed moreover that short expiry periods for gift vouchers are necessarily a source of long-term benefit for businesses and longer expiry periods a cost. According to one business analyst,[15] gift cards that go unredeemed should not be viewed as a gain for business:

> The short-term profits that are so visible are more than offset by the loss of long-term profits that remain hidden. Set them against brand damage and the loss of the far greater gains that come from redeemed vouchers and they are what economists call a false economy… Businesses should remove expiry dates entirely – not just extend them. Indeed they should actively encourage redemption. Recipients are customers as much as purchasers in this case – possibly new customers that a brand has not had to do a thing to acquire.

It is relevant to note in this context that the US gift card market continued to grow strongly after the introduction of a five-year minimum term for gift vouchers in 2010.[16] As noted in Part 3, two of the main business bodies for the retail sector here either support or do not oppose the proposed five-year minimum term provision.

As the costs and benefits of the expiry date provision will vary for different types of voucher and will depend among other things on the expiry periods currently applied by individual businesses or business entities, it is necessary to consider the provision's impact on the various types of voucher identified in Part 1. As the legislation will not apply to open-loop electronic money vouchers such as the One4All and FromMe2You gift cards, there is no need for further consideration of these products.

As outlined in Part 2, the majority of vouchers issued by individual traders or by retail or service chains currently have an expiry period of one or two years. As such, the introduction of a mandatory five-year minimum term might be assumed to have a significant impact on this type of voucher. Its precise effect is difficult however to predict in advance of its implementation. As observed earlier, there are a number of reasons other than lapsed expiry dates why gift vouchers go unredeemed. Some gift voucher providers expressed the view in responses to the public consultation and in subsequent meetings with Departmental officials that the effect of a five-year minimum term on redemption levels and breakage rates would be minimal as vouchers that are now unredeemed after one or two years would remain unredeemed in the great majority of cases if their period of validity is increased to five years.

At present, businesses which issue gift vouchers with an expiry period of 1 or 2 years are free to treat monies from vouchers unredeemed in full or in part at the end of that period as revenues and not as liabilities. While a mandatory term of five years for gift vouchers has clear implications for the treatment of monies from unredeemed vouchers, it is important to

---

[14] http://www.ukgcva.co.uk/downloads/State-of-the-Nation-non-members.pdf
[15] Tavassol, N. London Business School. 2017.'False profits and the folly of gift card expiry dates' https://www.london.edu/lbsr/false-profits-and-the-folly-of-gift-card-expiry-dates
[16] https://www.statista.com/statistics/671202/us-gift-card-sales/

note that the Act does not regulate the point at which, or the conditions under which, businesses can treat unredeemed balances on gift vouchers as revenues rather than liabilities. The obligation placed on businesses by the Act is to ensure that gift vouchers tendered for up to five years after their issue are accepted and honoured in full by the business that issued them. The financial arrangements made by businesses to ensure that this obligation can be met are not the subject of regulation by the Act. The Standard on Revenue from Contracts with Customers (International Financial Reporting Standard [IFRS] 15) prepared by the International Accounting Standards Board and its US counterpart, and subsequently endorsed by the EU, that took effect in 2018 is relevant in this context.[17] The Guidance on the Standard dealing with customers' unexercised rights states as follows at paragraphs B44 to B46:

> … upon receipt of a prepayment from a customer, an entity shall recognise a contract liability in the amount of the prepayment for its performance obligation to transfer, or to stand ready to transfer, goods or services in the future. An entity shall derecognise that contract liability (and recognise revenue) when it transfers those goods or services and, therefore, satisfies its performance obligations.
>
> A customer's non-refundable prepayment to an entity gives the customer a right to receive a good or service in the future (and obliges the entity to stand ready to transfer a good or service). However, customers may not exercise all of their contractual rights. Those unexercised rights are often referred to as breakage.
>
> If an entity expects to be entitled to a breakage amount in a contract liability, the entity shall recognise the expected breakage amount as revenue in proportion to the pattern of rights exercised by the customer. If an entity does not expect to be entitled to a breakage amount, the entity shall recognise the expected breakage amount as revenue when the likelihood of the customer exercising its remaining rights becomes remote. To determine whether an entity expects to be entitled to a breakage amount, the entity shall consider the requirements in paragraphs 56-58 on constraining estimates of variable consideration.

The thrust of the requirements in paragraphs 56-58 is that in estimating breakage amounts that can be treated as revenue, the business must demonstrate that it is 'highly probable' that those amounts will not be redeemed by the customer.[18] Such estimates must be evidence-based, for example by reference to reliable data on historical patterns of gift voucher redemption. If the business does not have sufficient reliable evidence of expected breakage, it can only recognise breakage amounts as revenue when the likelihood of the gift voucher holder exercising his or her remaining redemption rights becomes remote. The application of the rules and guidance of IFRS 15 to the treatment of breakage for gift vouchers issued by businesses or other entities is a matter for businesses and their

---

[17] The Standard can be accessed at the Annex to Regulation (EU) 2016/1905 on Certain International Financial Standards. The Application Guidance which forms an integral part of the Standard can be accessed at Appendix B of the Regulation.

[18] In drafting the revised Standard, the International Accounting Standards Board considered whether business entities should recognise as revenue immediately on receipt of the customer payment for gift vouchers which they did not think would be redeemed. It rejected that approach however in favour of recognising the expected breakage amount in proportion to the pattern of rights exercised by the customer.

accountants. There may be circumstances in accordance with the Standard however where a business would not necessarily have to wait until the statutory five-year expiry period has fully elapsed before it can claim some breakage amounts as revenue.

Even where reductions in revenues from gift voucher breakage decline following the introduction of a five-year minimum expiry period, there is reason to believe that this will not lead individual businesses to cease issuing vouchers on any significant scale or to begin charging fees for vouchers. The benefits to businesses from gift vouchers in terms of cash flow, extra spend and maintaining and expanding a customer base appear likely to outweigh possible losses from a fall in breakage revenues. Businesses which introduced fees for gift vouchers redeemable only in a single retailer or service provider, or in a retail or other chain, in response to any such losses would put themselves at a competitive disadvantage and risk making their vouchers unattractive to potential purchasers. Any move to cease offering vouchers or to introduce fees would be a commercial decision for individual businesses or business entities however and the possibility that some gift voucher providers may respond to a five-year minimum term in either of these ways cannot be ruled out.

A mandatory five-year term for gift vouchers may have a greater adverse effect on the gift cards offered by shopping centres and other limited network products such as town gift cards. At present, the cost of providing and servicing shopping centre cards is met mainly from revenues from vouchers unredeemed after the twelve-month expiry period which typically applies to these products. The benefits of such cards to the traders based in a shopping centre are more diffuse of their nature than the benefits from gift cards issued by an individual trader. Traders covered by a shopping centre gift card will typically also issue their own gift vouchers and these cards are to some extent in competition with the shopping centre card. Retailers and service providers in shopping centres may be reluctant or unwilling consequently to meet the additional costs of providing and servicing shopping centre cards resulting from a reduction in breakage revenues consequent on the introduction of a five-year expiry period for vouchers. While any fall in these revenues could be met by the introduction of fees for gift vouchers, the providers of gift card services to shopping centres have indicated that this option would not be popular with consumers and could lead to a decline in voucher sales. It is relevant to note however that a number of local gift card schemes operated by chambers of commerce have partnered with regulated electronic money providers are now subject to issuance and inactive balance fees. This does not appear to have impaired the appeal of these schemes which now benefit from the safeguarding and other protections that apply to electronic money instruments.

A number of providers of ‘experience’ gift vouchers argued in their submissions to the public consultation that the proposed five-year minimum term for gift vouchers would have a marked adverse impact on their business model. As noted in Part 1, an expiry period of 1 or 2 years is the norm for this type of voucher. The principal concern expressed by experience vouchers providers was that because these vouchers are not for a specified monetary amount, cost increases arising over the period between the issue of a voucher and its redemption cannot be recouped. A similar risk does not arise with vouchers for a specified monetary sum. If a consumer receives a hotel gift voucher for €150 in 2019 but does not use that voucher for four or five years, the consumer would have to meet the cost of any increase in the cost of hotel accommodation over the intervening period. If, however, a consumer receives a voucher that entitles him or her to ‘a stay in a hotel’ and does not use it for four or five years, the hotel would have to carry any increase in the cost of the stay over the period from the sale of the gift voucher. While the risks arising from cost increases in areas such as insurance, labour or energy may be manageable over a one- or two-year time horizon, experience gift vouchers providers contend that they would put the viability of this type of voucher in question if these risks had to be borne for a period as long as five years. If experience vouchers are required to be valid for five years, traders may no longer be willing or able to provide them as a result. As this type of voucher is particularly suited to hospitality and leisure experiences outside the main cities, the adverse impact would be concentrated among experience voucher providers in rural areas.

While the proposed five-year minimum term for gift vouchers may present a greater challenge for the providers of experience gift vouchers, there are, as noted earlier, grounds for believing that the introduction of a five-year expiry period for gift vouchers will not significantly change the pattern and timing of gift voucher redemptions. Just because a voucher would be valid for five years does not mean that the great majority of consumers who now redeem vouchers in year 1 will wait in future under year 4 or 5 to do so. Experience gift voucher providers concerned about pricing risks are free to provide in their terms and conditions that a price supplement might apply where vouchers are redeemed after a two-year or other period. The legislation prohibiting expiry dates on gift cards and other pre-paid cards in Quebec provides that businesses can indicate on a gift card the date from which they can require a price supplement to be paid for goods or services covered by a card.[19] Alternatively, providers could opt to switch to a fixed monetary value model for their vouchers. While it is not the aim of the legislation to create difficulties for providers of this type of gift voucher, excluding experience vouchers from the scope of the legislation, or providing for a shorter expiry period for this type of voucher, would cause confusion among consumers and could give traders offering this type of voucher a competitive advantage over other traders.

Cost and benefits of other provisions of Act

The Act's other provisions provide for the prohibition in contracts for the supply of gift vouchers of terms that require the full value of a gift voucher to be redeemed in a single transaction, limit the number of gift vouchers that can be used in a single transaction, or stipulate that gift vouchers are invalid where the name of the recipient on the voucher differs from his or her name in specified documentation such as a passport or provide for a charge for amending or changing the name of the consumer named on the voucher. These type of restrictive contract terms are applied by a relatively small number of businesses. While the prohibition of these terms may give rise to some losses in revenue for the businesses in question, the contract terms at issue operate to the detriment of consumers in ways that are unfair and unjustified. To the Department's knowledge, the businesses that currently apply these restrictive terms are well-established and, in some cases, major enterprises whose revenues should not derive from contract terms that are unjustified and operate to the disadvantage of consumers.

Other impacts

<u>Impact on consumers and competition</u>

The introduction of the proposed legislation would benefit consumers and would contribute also to fairer competition by curbing any competitive advantage enjoyed by businesses that

[19] https://www.opc.gouv.qc.ca/en/consumer/what-every-consumer-should-know/gift-card-expiry/

apply arbitrary or unreasonably short time limits or restrictive terms and conditions to gift voucher contracts.

Impact on compliance burdens

There would be a transitional impact on the compliance burden for businesses whose gift vouchers have an expiry period of less than five years due to the need to revise contract terms and conditions and, in some cases, to update payment and IT systems.

Impacts on the socially excluded and vulnerable groups, the environment, rights of citizens, North-South and East-West relations.

No impact in these areas.

6 Enforcement and compliance

1. No policy change

The Competition and Consumer Protection Commission would continue to be responsible for the enforcement of the provisions of general consumer protection as they apply to non-electronic money gift voucher contracts and transactions but would not have any additional enforcement functions.

The Central Bank would continue to be responsible for the enforcement in respect of electronic money gift vouchers cards of the relevant provisions of the European Communities (Electronic Money) Regulations 2011 and the European Union (Payment Services) Regulations 2018. It would also remain responsible for the enforcement in respect of these vouchers of the provisions of the Consumer Protection Act 2007 on unfair, misleading and aggressive commercial practices and of the European Communities (Unfair Terms in Consumer Contracts) Regulations 1995.

Introduction of proposed legislation on gift vouchers

The Competition and Consumer Protection Commission would be responsible for the enforcement of the proposed legislation. This enforcement would be undertaken under the enforcement regime in force under Part 5 of the Consumer Protection Act 2007.

7 Review mechanism

The legislation will be reviewed as part of the ongoing review of consumer protection legislation by the Department of Business, Enterprise and Innovation.

8 Publication

This Regulatory Impact Analysis will be published on the website of the Department of Business, Enterprise and Innovation (https://dbei.gov.ie/en/Legislation/)