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An Comhchoiste um Ghnó, Fiontair agus Nuálaíocht

Tuarascáil maidir leis an nGrinnscrúdú ar an mBille um Chosaint Tomhaltóirí (Leasú), 2017 [BCP]

Feabhra 2019

Joint Committee on Business, Enterprise and Innovation

Report on the Scrutiny of the Consumer Protection (Amendment) Bill 2017 [PMB]

February 2019

032 BEI 016

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Introduction to the Dáil

The Consumer Protection (Amendment) Bill 2017 [PMB] ("the Bill") was introduced into the Dáil by Deputy Niall Collins on the 28 November 2017. The Bill was considered at Second Stage on the 21 June 2018 and the Dáil agreed that it be referred to the Committee.

Committee Scrutiny of the Bill

The Joint Committee on Business, Enterprise and Innovation ("the Committee") agreed to carry out detailed scrutiny of the Bill. The Committee met with the Bill sponsor, Deputy Collins, and officials from the Department of Business, Enterprise and Innovation ("the Department") to discuss the Bill on the 2 October 2018.

The Minister for Business, Enterprise and Innovation was included in the circulation of a draft of this report, in accordance with Standing Order 141(2), as an *ex officio* member of the Committee.

Procedural Basis fro Scrutiny

Private Members Bills referred to Select Committee are subject to the provisions of Standing Order 141(2) [Dáil] which provides that a Select Committee "shall undertake detailed scrutiny of the provisions of such Bills….and shall report thereon to the Dáil prior to Committee Stage consideration…." unless the Committee decides in relation to a particular Bill that detailed scrutiny is not necessary.

Paragraph (3) of Dáil Standing Order 141 permits scrutiny of the Bill in Joint Committee, viz. "Nothing in this Standing Order shall preclude a Joint Committee from undertaking detailed scrutiny as set out in paragraph (2) and reporting thereon to both Houses prior to Committee Stage consideration of the Bill by the Select Committee."

Other Proposals

It should be noted that other Bills have been proposed for the regulation of gift vouchers. The Government has approved the General Scheme of the Unfair Contract Terms (Gift Vouchers) Bill 2018. The Committee agreed not to undertake pre-legislative scrutiny of this Bill.

Deputies Catherine Murphy and Róisín Shortall have also introduced the Consumer Rights (Gift Vouchers) Bill 2017 on the 21st November 2017. Second Stage has yet to be taken.

Main Provisions of the Bill

The main provisions of the Bill are outlined in table 1.

Table 1: Main Provisions of the Bill

Category	**Consumer Protection (Amendment) Bill 2017** **[No. 143 of 2017]** **(Sponsor: Niall Collins T.D.)**
Scope of the Bill	The Bill seeks to amend the Consumer Protection Act 2007 to introduce a five year minimum expiry period for gift vouchers and to require that certain information is provided to the consumer.
Expiry period	Gift vouchers shall not have a contract term that makes it subject to an expiry date that is less than five years from the date the gift voucher is sold. Any gift voucher that includes an expiry date which is less than five years will be treated as having an expiry date five years after purchase.
Information requirements	Traders must insure that the consumer is informed of any fees provided for in the contract, including fees charged for: a) The issue of a gift voucher; b) The repayment to the consumer of any credit balance on the gift voucher; c) The replacement of a lost or stolen gift voucher; or d) An inactive balance on the gift voucher. The information provided is to be in accordance with the European Union (Consumer Information, Cancellation and Other Rights) Regulations 2013.
Definitions	'Gift voucher' is defined as a voucher in any form (including a card, an electronic credit or a written certificate) supplied by a trader which the consumer is entitled to apply towards the purchase of goods, digital content or services covered by the voucher.

Discussions on the Bill

The Bill addresses two separate issues, the length of expiry dates linked to gift vouchers and the information that must be provided by gift voucher sellers. A number of other issues were also raised during the Committee's discussions on the Bill.

General Aim of the Bill

The Bill was discussed at Second Stage on the 21 June 2017. Deputy Collins stated that the Bill would enhance consumer rights and protections in the currently unregulated area of gift vouchers. According to Deputy Collins, around two-thirds of the gift voucher market is completely unregulated. For gift vouchers that do not come under the European electronic money directive[1], there is no consumer protection legislation.

Deputy Collins highlighted that this was a particular issue around busy shopping periods such as Christmas. In particular, consumers often received gift vouchers as gifts and are unaware of the conditions attached to the voucher.

While presenting to the Committee, Deputy Collins reiterated that the Bill is a "pro-consumer initiative and will greatly enhance consumer protections and rights in the unregulated area of the sale of gift vouchers". He also stated that it would enhance transparency by giving consumers access to terms and conditions and certainty around expiry dates.

Expiry Date

The Bill proposes to introduce a minimum expiry period of five years for all gift vouchers as defined by the Bill. Any gift vouchers with a shorter expiry date will be considered to have an expiry date five years after the date of purchase.

While addressing the Committee, Deputy Collins highlighted that gift vouchers often have very little text on them or any details relating to the expiry date.

Officials from the Department of Business, Enterprise and Innovation informed the Committee that the expiry dates on gift vouchers vary from six months to ten years, though most are valid for one or two years. The Department carried out a public consultation on the topic of gift vouchers. Retail Ireland and Chambers Ireland did not oppose the five year time limit, while Retail Excellence was in favour of a three year time limit.

Some opposition to expiry date provisions was also received by the Department, primarily by gift voucher issuers and service providers whose business model depends on the revenues from vouchers not fully redeemed within the expiry period.

According to the Department officials, the great majority are used within 12 months, with most being used quite quickly. Around 2% or 3% of vouchers are not redeemed at all, with a similar percentage not redeemed in full. Vouchers that cover a wide range of retailers are more likely to be redeemed than those that can only be used at a single retailer.

[1] Directive 2009/110/EC

The issue of "experience vouchers" (vouchers that provide an experience, e.g. hot balloon trips, but not a monetary value) was raised at both Second Stage and before the Committee. As the voucher relates to an event, the costs, including energy and insurance, can be significantly different years after the purchase. While before the Committee, Department officials stated, that this concern may be overstated as a five year limit does not mean that large numbers of voucher holders will wait the five years to use their voucher. The officials also highlighted that costs may fall as well as rise. However, the officials did consider that the implications of a minimum five year expiry period for these types of vouchers merit further consideration.

Provision of Information

The Bill also provides that the seller of a gift voucher must ensure that the consumer is informed of any fees included in the contract and of any restrictions in the contract. This information shall be provided in accordance with the regulations set out in the European Union (Consumer Information, Cancellation and Other Rights) Regulations 2013[2] depending on where the voucher was purchased (on premise, off-premise or distance).

At the Second Stage reading of the Bill, Deputy Collins outlined that the proposals would give consumers full access to the terms and conditions of the voucher they are buying. Deputy Collins also highlighted that many people who receive the gift vouchers as a gift are often unaware of the terms and conditions that apply to them, including any expiry date on the voucher. Appearing before the Committee, Deputy Collins told the Committee that gift vouchers often do not have many details on the expiry date.

These requirements, according to Deputy Collins, "will enhance consumer protection by providing that a consumer must be informed of any restriction associated with a gift voucher prior to being bound by any such contract"[3].

Addressing the Committee, Deputy Collins expanded on the types of information that consumers should be informed of before purchasing a gift voucher. This includes issues such as not being able to use two different vouchers in one transaction, vouchers being refused during sales and no change being given from voucher sales.

Other Issues

A number of other issues were raised during the Committee's discussions on the Bill.

Maximum Harmonisation

A concern arose surrounding the Act the Bill is proposing to amend. The Consumer Protection Act 2007, as outlined by the Department officials, gives effect to the Unfair Commercial Practices Directive. This Directive is a maximum (or full) harmonisation instrument, therefore providing for the regulation of gift voucher expiry dates runs the risk of being incompatible with EU law. A maximum

[2] http://www.irishstatutebook.ie/eli/2013/si/484/made/en/print?q=European+Union+Consumer+Information%2C+Cancellation+and+Other+Rights+Regulations+2013

[3] https://www.oireachtas.ie/en/debates/debate/joint_committee_on_business_enterprise_and_innovation/2018-10-02/

harmonisation instrument prevents Member States from introducing stricter measures, as well as more lenient measures. This is to ensure a uniform regulatory framework harmonising national rules at EU level. The full harmonisation nature of the Directive has been confirmed by the European Court of Justice, stating that Member States "may not adopt stricter rules than those provided for in the Directive, even in order to achieve a higher level of consumer protection"[4].

A note provided by the Department following its appearance before the Committee gives additional detail on the concerns related to amending the Consumer Protection Act 2007. Section 55 of the Act, which the Bill proposes to amend, gives effect to the "Commercial Practices Which Are In All Circumstances Considered Unfair" Annex of the Directive.

The Department's note also highlights that sections 47 and 48 of the Consumer Protection Act 2007 were not commenced due to advice from the Attorney General as they were not compatible with the Directive's maximum harmonisation status.

While presenting to the Committee, the Department officials stated that while this was a minor issue in terms of the Bill's aims, it is an important legal issue. The Department's note reiterates that it is an issue of legal form, not substance and can be easily resolved through a provision that would not form part of section 55 of the Consumer Protection Act.

The proposed Government Bill on the issue creates a standalone piece of legislation covering gift vouchers. This new piece of legislation will be included in the Consumer Protection Act 2007 (to apply the remedies and penalties of the Act to the new legislation) and the Competition and Consumer Protection Act 2014 (to bring it under the remit of the Competition and Consumer Protection Commission, CCPC).

Observations

1. The Committee notes that the Bill, as currently written, may be incompatible with EU law, which can be rectified with amendments at committee stage.

Recommendations

2. The Committee recommends that the Bill be amended at committee stage in relation to the reference to section 55 of the Consumer Protection Act 2007 to ensure the Bill is compatible with EU law.

Definitions

The Bill defines a gift voucher as "a voucher in any form (including a card, an electronic credit or a written certificate) supplied by a trader which the consumer is entitled to apply towards the purchase of goods, digital content or services covered by the voucher".

[4] Joined Cases C-261/07 and C-299/07 (paragraph 55) https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:62007CJ0261&from=EN

During the Second Stage debate, Deputy Collins indicated that the Bill was intended to cover the portion of vouchers that are not covered by the EU electronic money directive, EU anti-money laundering laws and the payments services directives. According to Deputy Collins, two-thirds of the gift voucher market is unregulated, primarily in the form of shopping centre cards and single brand store cards.

Some concerns were raised by Department officials surrounding the definition of gift voucher, stating "there is a need to examine whether the broad nature of this definition could potentially bring some products within its scope that would not normally be regarded as gift vouchers"[5]. The officials also outlined that the Bill as drafted would apply to all vouchers, including those currently regulated by the EU directives and those that are not. The Department's consultation on the issue received a number of submissions arguing that the inclusion of electronic gift money vouchers would be double regulation and could lead to confusion and legal conflicts, and therefore should be excluded from new legislation in the area.

Observations

3. The Committee notes that the Bill is not intended to cover "electronic money" vouchers.
4. The Committee notes that the definition of gift voucher set out in the Bill may require further clarity around what vouchers are included.

Recommendations

5. The Committee recommends that the definition of gift voucher in the Bill be amended to give greater clarity on the types of vouchers covered by the provisions of the Bill.

Fees, Change & Lost Vouchers

During the Committee's discussion on the Bill, the fees charged by gift voucher issuers and change not being given by retailers were also raised as concerns with gift vouchers.

Deputy Collins told the Committee that the Bill did not seek to be prescriptive "in terms of the fee and charges or terms and conditions" and that the main aim is to ensure that consumers are informed.

The main type of fee raised during the Committee's scrutiny was the charges on some vouchers after 12 months, whereby the value of the voucher falls by a certain amount each month after (in most cases) a 12 month period. This leads to the quick erosion of value of the voucher, in particular for relatively low value vouchers.

During the Second Stage debate Minister Halligan stated that the proposed Government Bill would give the Minister power to regulate gift voucher fees. The Minister intends to undertake a

[5] https://www.oireachtas.ie/en/debates/debate/joint_committee_on_business_enterprise_and_innovation/2018-10-02/

consultation on the issue of fees that will inform future decisions "on whether to prohibit, reduce, retain or rebalance these fees".

Recommendations

6. The Committee welcomes the proposed consultation on fees related to gift vouchers and recommends that this consultation be concluded as soon as possible.

Concerns were also raised during the Committee's scrutiny of the Bill that some businesses do not give change on gift cards, leading to some consumers not being able to avail of the full value of the voucher. Officials from the Department noted that this had come to their attention, but that refusing to give change could be considered to be an unfair commercial practice under the Consumer Protection Act 2007 and failure to inform consumers that no change would be given could be a misleading omission under the same Act.

Recommendations

7. The Committee recommends that consideration be given to explicitly providing for vouchers to be reusable or change to be given.

The difficulty in replacing lost or stolen vouchers was also raised during the Committee's discussions on the Bill. While it is not included in the proposed Bill, Deputy Collins stated that an amendment could be included requiring sellers of gift vouchers to keep a register of vouchers sold.

Costs Associated with the Bill

The officials from the Department stated that the main costs related to the Bill would be enforcement and awareness costs for the CCPC. When new legislation is introduced there is a responsibility on the regulator to inform both consumers and businesses. The officials also highlighted that any new responsibilities for the CCPC would displace some of their current activities without some additional funding.

Recommendations

8. The Committee recommends that Department officials set out the approximate enforcement and awareness costs that would arise annually relating to the Bill.

Legislation in Other Jurisdictions

During the Committee's discussions on the Bill, Deputy Collins outlined that the USA and Canada had introduced rules on expiry dates.

In Canada, most provinces do not allow expiry dates on vouchers, with some exceptions such as, promotional gift vouchers or gift vouchers for a specific service (e.g. a free haircut). Canada also has restrictions on the types of fees which can be charged. In general, fees can only be charged for customising a gift voucher, to replace a lost or stolen voucher and to maintain the balance after a certain period.

In the USA, federal rules require that gift vouchers must be valid for a minimum of five years. Fees can be charged to purchase or replace a lost voucher and monthly inactivity fees can be charged after 12 months. Some States have gone beyond the federal rules and banned expiry dates completely.

Conclusion

The Committee was unanimously of the view that there is a need for greater gift voucher regulation, particularly around expiry dates.

The Committee is fully supportive of the aims of the Bill, though as it has previously recommended in this report, the Committee accepts that the Bill as drafted risks being found incompatible with EU law. This can be rectified through amendments.

The Committee has also made a number of recommendations that should be taken into account if the Bill proceeds to Committee Stage.

Observations

9. The Committee notes that a money message is required before the Bill can proceed to Committee Stage

Recommendations

10. The Committee recommends that the Bill should proceed to Committee Stage.

Appendices

Appendix1: Committee Membership

Chairperson: Mary Butler (FF)

Deputies: Lisa Chambers (FF)

Billy Kelleher (FF)

James Lawless (FF)

Tom Neville (FG) [Vice-Chair]

Maurice Quinlivan (SF)

Noel Rock (FG)

Senators: Aidan Davitt (FF)

Pádraig Mac Lochlainn (SF)

Kevin Humphreys (LAB)

James Reilly (FG)

Notes:

1. Deputy Gino Kenny replaced Deputy Bríd Smith on 26 October 2017.
2. Senator Kevin Humphreys replaced Senator Ged Nash on 16 November 2017.
3. Deputy James Lawless replaced Deputy Gino Kenny on the 20 February 2018
4. Deputy Billy Kelleher replaced Deputy Niall Collins on the 17 April 2018
5. Deputy Lisa Chambers replaced Deputy Stephen Donnelly on 17 April 2018
6. Senator Pádraig Mac Lochlainn replaced Senator Paul Gavan on 09 October 2018

Appendix 2: Terms of Reference

a. Functions of the Committee – derived from Standing Orders [DSO 84A; SSO 70A]

(1) The Select Committee shall consider and report to the Dáil on—

(*a*) such aspects of the expenditure, administration and policy of a Government Department or Departments and associated public bodies as the Committee may select, and

(*b*) European Union matters within the remit of the relevant Department or Departments.

(2) The Select Committee appointed pursuant to this Standing Order may be joined with a Select Committee appointed by Seanad Éireann for the purposes of the functions set out in this Standing Order, other than at paragraph (3), and to report thereon to both Houses of the Oireachtas.

(3) Without prejudice to the generality of paragraph (1), the Select Committee appointed pursuant to this Standing Order shall consider, in respect of the relevant Department or Departments, such—

(*a*) Bills,

(*b*) proposals contained in any motion, including any motion within the meaning of Standing Order 187,

(*c*) Estimates for Public Services, and

(*d*) other matters

as shall be referred to the Select Committee by the Dáil, and

(*e*) Annual Output Statements including performance, efficiency and effectiveness in the use of public monies, and

(*f*) such Value for Money and Policy Reviews as the Select Committee may select.

(4) The Joint Committee may consider the following matters in respect of the relevant Department or Departments and associated public bodies:

(*a*) matters of policy and governance for which the Minister is officially responsible, (*b*) public affairs administered by the Department,

(*c*) policy issues arising from Value for Money and Policy Reviews conducted or commissioned by the Department,

(*d*) Government policy and governance in respect of bodies under the aegis of the Department,

(*e*) policy and governance issues concerning bodies which are partly or wholly funded by the State or which are established or appointed by a member of the Government or the Oireachtas,

(*f*) the general scheme or draft heads of any Bill,

(*g*) any post-enactment report laid before either House or both Houses by a member of the Government or Minister of State on any Bill enacted by the Houses of the Oireachtas,

(*h*) statutory instruments, including those laid or laid in draft before either House or both Houses and those made under the European Communities Acts 1972 to 2009,

(*i*) strategy statements laid before either or both Houses of the Oireachtas pursuant to the Public Service Management Act 1997,

(*j*) annual reports or annual reports and accounts, required by law, and laid before either or both Houses of the Oireachtas, of the Department or bodies referred to in subparagraphs (*d*) and (*e*) and the overall performance and operational results, statements of strategy and corporate plans of such bodies, and

(*k*) such other matters as may be referred to it by the Dáil from time to time.

(5) Without prejudice to the generality of paragraph (1), the Joint Committee appointed pursuant to this Standing Order shall consider, in respect of the relevant Department or Departments—

(*a*) EU draft legislative acts standing referred to the Select Committee under Standing Order 114, including the compliance of such acts with the principle of subsidiarity,

(*b*) other proposals for EU legislation and related policy issues, including programmes and guidelines prepared by the European Commission as a basis of possible legislative action,

(*c*) non-legislative documents published by any EU institution in relation to EU policy matters, and

(*d*) matters listed for consideration on the agenda for meetings of the relevant EU Council of Ministers and the outcome of such meetings.

(6) Where a Select Committee appointed pursuant to this Standing Order has been joined with a Select Committee appointed by Seanad Éireann, the Chairman of the Dáil Select Committee shall also be the Chairman of the Joint Committee.

(7) The following may attend meetings of the Select or Joint Committee appointed pursuant to this Standing Order, for the purposes of the functions set out in paragraph (5) and may take part in proceedings without having a right to vote or to move motions and amendments:

(*a*) Members of the European Parliament elected from constituencies in Ireland, including Northern Ireland,

(*b*) Members of the Irish delegation to the Parliamentary Assembly of the Council of Europe, and

(*c*) at the invitation of the Committee, other Members of the European Parliament.

(8) A Select Committee appointed pursuant to this Standing Order may, in respect of any Ombudsman charged with oversight of public services within the policy remit of the relevant Department or Departments, consider—

(*a*) such motions relating to the appointment of an Ombudsman as may be referred to the Committee, and

(*b*) such Ombudsman reports laid before either or both Houses of the Oireachtas as the Committee may select.

b. Scope and Context of Activities of Committees (as derived from Standing Orders) [DSO 84; SSO 70]

(1) The Joint Committee may only consider such matters, engage in such activities, exercise such powers and discharge such functions as are specifically authorised under its orders of reference and under Standing Orders; and

(2) Such matters, activities, powers and functions shall be relevant to, and shall arise only in the context of, the preparation of a report to the Dáil and/or Seanad.

(3) The Joint Committee shall not consider any matter which is being considered, or of which notice has been given of a proposal to consider, by the Committee of Public Accounts pursuant to Standing Order 186 and/or the Comptroller and Auditor General (Amendment) Act 1993; and

(4) any matter which is being considered, or of which notice has been given of a proposal to consider, by the Joint Committee on Public Petitions in the exercise of its functions under Standing Orders [DSO 111A and SSO 104A].

(5) The Joint Committee shall refrain from inquiring into in public session or publishing confidential information regarding any matter if so requested, for stated reasons given in writing, by—

(a) a member of the Government or a Minister of State, or

(b) the principal office-holder of a body under the aegis of a Department or which is partly or wholly funded by the State or established or appointed by a member of the Government or by the Oireachtas:

Provided that the Chairman may appeal any such request made to the Ceann Comhairle / Cathaoirleach whose decision shall be final.

(6) It shall be an instruction to all Select Committees to which Bills are referred that they shall ensure that not more than two Select Committees shall meet to consider a Bill on any given day, unless the Dáil, after due notice given by the Chairman of the Select Committee, waives this instruction on motion made by the Taoiseach pursuant to Dáil Standing Order 28. The Chairmen of Select Committees shall have responsibility for compliance with this instruction.