

DÁIL ÉIREANN

AN ROGHCHOISTE UM GHNÓ, FIONTAIR AGUS NUÁLAÍOCHT

SELECT COMMITTEE ON BUSINESS, ENTERPRISE AND INNOVATION

Déardaoin, 24 Deireadh Fómhair 2019

Thursday, 24 October 2019

The Select Committee met at 2.15 p.m.

Comhaltaí a bhí i láthair / Members present:

Seán Crowe,*	
Heather Humphreys (Minister for Business, Enterprise and Innovation),	
Robert Troy.	

* In éagmais / In the absence of Deputy Imelda Munster.

Teachta / Deputy Tom Neville sa Chathaoir / in the Chair.

Consumer Protection (Gift Vouchers) Bill 2018: Committee Stage

Vice Chairman: Apologies have been received from the Chairman, Deputy Butler, and Deputy Munster.

The meeting has been convened to consider the Consumer Protection (Gift Vouchers) Bill 2018 which was referred to the select committee by order of the Dáil of 14 February. I ask members to ensure their mobile phones are turned off or switched to airplane mode. It is not enough to leave them in silent mode as it maintains a level of interference with the broadcasting and recording systems.

Members are reminded of the long-standing parliamentary practice to the effect that they should not comment on, criticise or make charges against a person outside the House or an official, either by name or in such a way as to make him or her identifiable.

I welcome the Minister for Business, Enterprise and Innovation, Deputy Humphreys, and her officials. Two amendments have been tabled. It is proposed that the committee consider the Bill until it concludes Committee Stage today. Is that agreed? Agreed.

Section 1 agreed to.

NEW SECTION

Minister for Business, Enterprise and Innovation (Deputy Heather Humphreys): I move amendment No. 1:

In page 3, between lines 8 and 9, to insert the following:

“Gift voucher contracts

2. The Act of 2007 is amended by the insertion of the following Part after Part 4:

“Part 4A

GIFT VOUCHER CONTRACTS

Definitions and application

66A. (1) In this Part—

‘durable medium’ means any medium on which information is provided and stored, including paper and email, that—

(a) renders the information accessible for future reference for a period of time adequate for the purposes of the information, and

(b) allows the unchanged reproduction of the information;

‘expiry date’ means the date after which, by virtue of the passage of time, a gift voucher ceases to be redeemable for the purchase of goods or services;

‘gift voucher’ means, subject to subsection (2), any voucher, coupon or other document or instrument, including in electronic form, that is intended to be used as a substitute for money in the payment, in whole or in part, for goods or services or

otherwise exchanged for goods or services;

‘gift voucher contract’ means a contract between a relevant trader and another person whereby the relevant trader supplies the person with a gift voucher;

‘relevant trader’ means a trader who supplies a gift voucher to a person in accordance with a gift voucher contract.

(2) In this Part, ‘gift voucher’ does not include a voucher, coupon or other document or instrument, including in electronic form—

(a) that is redeemable only for the purposes of the purchase, at a discounted price, of specified goods or specified services, from a specified trader or traders—

(i) on a specified date, or

(ii) for a specified period of a limited duration not exceeding 3 months,

(b) that is supplied under a customer loyalty scheme,

(c) that is supplied in connection with a promotional scheme that is connected to the purchase of specified goods or specified services,

(d) that is supplied by way of a refund for goods returned to a trader,

(e) that is redeemable only in exchange for goods or services relating to telephone services, internet services, fuel, electricity, heating or any other utility,

(f) that is a cheque, bank draft or postal money order,

(g) that constitutes electronic money, within the meaning of the European Communities (Electronic Money) Regulations 2011 (S.I. No. 183 of 2011), or

(h) that is not supplied, marketed, provided or otherwise made available to be given as a gift.

(3) This Part applies to a gift voucher contract that is entered into on or after the date on which this subsection comes into operation.

(4) Any reference in this Part to a term of a gift voucher contract includes a reference to a term which, although not contained in the contract, is incorporated in the contract by another term of the contract or by any other means.

Terms of gift voucher contracts

66B. (1) (a) Subject to subsection (5), a gift voucher contract shall contain a term that the gift voucher is—

(i) subject to an expiry date that is at least 5 years from the date on which the contract was entered into, or

(ii) not subject to an expiry date.

(b) Where a gift voucher contract does not include a term satisfying paragraph (a), the contract shall be deemed to include a term that the gift voucher

is subject to an expiry date that is 5 years from the date on which the contract was entered into.

(c) Where a gift voucher contract is deemed to contain a term in accordance with paragraph (b), and that term conflicts with an express term in the contract, the term under paragraph (b) shall override the express term.

(d) A relevant trader who enters into a gift voucher contract that is contrary to paragraph (a) commits an offence and is liable on conviction on indictment or on summary conviction, as the case may be, to the fines and penalties provided in Chapter 4 of Part 5.

(2) (a) A relevant trader who enters into a gift voucher contract shall specify, whether on the gift voucher itself or otherwise on a durable medium supplied with the gift voucher—

(i) the expiry date of the gift voucher,

(ii) the date on which the gift voucher contract was entered into and the period during which the gift voucher to which it relates is redeemable, or

(iii) that the gift voucher is not subject to an expiry date.

(b) A relevant trader who fails to comply with paragraph (a) commits an offence and is liable on summary conviction to the fines and penalties provided in Chapter 4 of Part 5.

(3) (a) A gift voucher contract shall not contain a term requiring the full value of a gift voucher to be redeemed in a single transaction.

(b) A relevant trader who enters into a gift voucher contract that is contrary to paragraph (a) commits an offence and is liable on conviction on indictment or on summary conviction, as the case may be, to the fines and penalties provided in Chapter 4 of Part 5.

(4) (a) Where—

(i) a person redeems part of the value of a gift voucher in a transaction, such that the remaining balance of the gift voucher is €1 or more, and

(ii) the gift voucher contract contains a term preventing the remaining balance of the gift voucher from being redeemed in another transaction, the gift voucher contract shall be deemed to include a term requiring the relevant trader to reimburse the remaining balance of the gift voucher to the person, in cash, by electronic transfer or by way of a gift voucher, in accordance with subsection (5).

(b) Where a gift voucher contract is deemed to contain a term in accordance with paragraph (a), and that term conflicts with an express term in the contract, the term under paragraph (a) shall override the express term.

(c) A relevant trader who enters into a gift voucher contract that contains an

express term that is contrary to paragraph (a) commits an offence and is liable on conviction on indictment or on summary conviction, as the case may be, to the fines and penalties provided in Chapter 4 of Part 5.

(5) Where the remaining balance referred to in subsection (4)(a) is reimbursed by way of a gift voucher, the gift voucher concerned shall have—

(a) an expiry date not earlier than the expiry date of the gift voucher referred to in the said subsection (4)(a), and (b) a value equal to that of the remaining balance of the gift voucher referred to in the said subsection (4)(a).

(6) (a) In this subsection, ‘gift voucher contract to which this subsection applies’ means a gift voucher contract that contains a term requiring a gift voucher to be redeemed by a named person.

(b) A gift voucher contract to which this subsection applies shall contain a term providing that—

(i) the named person may redeem the gift voucher notwithstanding a difference between that person’s name as it appears on, or in connection with, the gift voucher, and as it appears on that person’s passport, driving licence, or any other form of personal identification, and

(ii) the named person’s name as it appears on, or in connection with, the gift voucher may be amended or changed without a fee being charged.

(c) Where a gift voucher contract to which this subsection applies does not contain a term satisfying paragraph (b), the contract shall be deemed to include a term giving effect to that paragraph.

(d) Where a gift voucher contract to which this section applies is deemed to contain a term in accordance with paragraph (c), and that term conflicts with an express term in the contract, the term under paragraph (c) shall override the express term.

(e) A relevant trader who enters into a gift voucher contract to which this subsection applies that is contrary to paragraph (b) commits an offence and is liable on conviction on indictment or on summary conviction, as the case may be, to the fines and penalties provided in Chapter 4 of Part 5.

(7) (a) A gift voucher contract shall not contain a term that places a limit on the number of gift vouchers that a person is permitted to redeem in a single transaction.

(b) A relevant trader who enters into a gift voucher contract that is contrary to paragraph (a) commits an offence and is liable on conviction on indictment or on summary conviction, as the case may be, to the fines and penalties provided in Chapter 4 of Part 5.

(8) (a) Where a gift voucher contract contains a term relating to the replacement by a relevant trader of a gift voucher that has been lost or stolen, that term shall provide that the replacement gift voucher shall not be subject to an expiry date that is earlier than the expiry date of the gift voucher that it replaces.

(b) Where a gift voucher contract contains a term relating to the replacement by a relevant trader of a gift voucher that has been lost or stolen, and which does not satisfy paragraph (a), the contract shall be deemed to include a term giving effect to that paragraph.

(c) Where a gift voucher contract is deemed to contain a term in accordance with paragraph (b), and that term conflicts with an express term in the contract, the term under paragraph (b) shall override the express term.

(d) A relevant trader who enters into a gift voucher contract that is contrary to paragraph (a) commits an offence and is liable on conviction on indictment or on summary conviction, as the case may be, to the fines and penalties provided in Chapter 4 of Part 5.

(9) Where a gift voucher contract contains a term that is contrary to the requirements of this section—

(a) the term shall not be binding on—

(i) a party to the gift voucher contract who is not a relevant trader, or

(ii) a person who has rights under the gift voucher contract under subsection (10), and

(b) the gift voucher contract shall continue to bind the parties to it, or a person who has rights under the gift voucher contract under subsection (10), if it is capable of continuing in existence without the term that is contrary to the requirements of this section.

(10) Where a person (other than a relevant trader) who is party to a gift voucher contract gives, sells or otherwise transfers the gift voucher to which the contract relates to a third person, the third person shall be entitled to exercise all rights under the gift voucher contract on the same terms as the original party to the gift voucher contract.”.”.

The amendment involves the replacement in its entirety of section 2 of the Bill as initiated, with the heading, “Gift voucher contracts”. Acceptance of the amendment involves accordingly the deletion of section 2 of the Bill. This approach to the amendment of section 2 was taken on the advice of the Office of the Parliamentary Counsel in view of the number and nature of the changes made to the section.

The great majority of the proposed amendments concern the form and not the substance of the Bill’s provisions. None of the individual amendments lessen or weaken in any way the protections contained in the Bill as initiated. The amendments in fact significantly strengthen the protections provided for in the Bill. As I have submitted a detailed briefing note to the select committee setting out the individual amendments made to section 2 and the reasons for them, I will now outline only the main amendments that are proposed.

There are three substantive additions to the Bill. The first is the proposed prohibition in section 66B(7), as proposed in section 2, 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

business that issued the voucher would be permitted to use only one of the vouchers. A contract term of this kind is unfair and unjustified.

The second addition provides in section 66B(8), as proposed in section 2, 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. 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 businesses that a replacement voucher will not be treated as a new voucher for the purpose of the five-year expiry date requirement.

The third substantive addition provides in section 66B(10), as proposed in section 2, 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 normally redeemed by their recipients rather than their purchasers, it is necessary to ensure that the recipient of a voucher can exercise the same rights under the contract as its purchaser, including rights included in gift voucher contracts by this Bill.

A number of the proposed amendments have been made in response to legal advice that certain provisions of the Bill as initiated were at risk of legal challenge on the ground of incompatibility with the unfair commercial practices directive. The legal advice recommended that in order to minimise the risk of legal challenge, provisions aimed at commercial practices by traders should be redrafted so that they were aimed instead at terms in gift voucher contracts. This has been done in sections 66B(1), (4), (6) and (8), as proposed in section 2 of the Bill.

The great majority of the other amendments to the Bill are technical in nature. The definition of “gift voucher” in section 66A(1), as proposed in section 2, has been amended to exclude a number of products such as prepaid telephone and Internet cards, gas and electricity cards, diesel and petrol cards, cheques and postal orders that share some characteristics with gift vouchers and might accordingly be held to come within the definition of that term, but to which the protections of the Bill are unnecessary or would be inappropriate. Electronic money gift vouchers are also excluded from the scope of the Bill in response to legal advice from the Office of the Attorney General that its inclusion risked incompatibility with the maximum harmonisation nature of the electronic money directive, as well as conflict with the regulatory regime for electronic money. The counterparty to the trader who supplies a gift voucher under a gift voucher contract is now referred to as a “person” rather than, as in the Bill as initiated, a “consumer”, in recognition of the facts that many businesses purchase vouchers to give to their employees and that these employees would not be regarded as “consumers” under the definition of that term in consumer 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), as proposed in 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 three months.

Amendment agreed to.

Section 2 deleted.

NEW SECTION

Deputy Heather Humphreys: I move amendment No. 2:

In page 5, between lines 6 and 7, to insert the following:

“Consequential amendments to Act of 2007

3. The Act of 2007 is amended—

(a) in section 67, by the substitution of the following paragraph for paragraph (d):

‘(d) any contravention of section 65(1) or section 66B,’

(b) in section 85(1), by the substitution of the following paragraphs for paragraph (d):

‘(d) Regulation 5(3), 7(8), 8(5), 9(4), 10(10), 11(6), 12(5), 19(7), 25(4), 26(5) or 27(4) of the European Union (Consumer Information, Cancellation and Other Rights) Regulations 2013 (S.I. No. 484 of 2013);

(e) section 66B(2).’

and

(c) in section 90(1), by the substitution of the following paragraphs for paragraph (h):

‘(h) the provisions of the European Union (Unjustified Geo-blocking of Consumers) Regulations 2018 (S.I. No. 513 of 2018);

(i) the provisions of Part 4A.’”.

This amendment involves the replacement in its entirety of section 3 of the Bill as initiated. Acceptance of the amendment involves accordingly the deletion of section 3 of the Bill.

Sections 3(a) and 3(c) are similar to the corresponding provisions in the Bill as initiated. Section 3(b) is new. The purpose of this addition is to bring offences involving contraventions of the requirement on traders to provide information on the expiry date or period of gift vouchers within the scope of section 85 of the Consumer Protection Act 2007 on fixed payment notices. It is appropriate that contraventions of information requirements relating to gift vouchers should, like contraventions of other information requirements in the 2007 Act and in other consumer legislation, be capable, where appropriate, of being the subject of fixed payment notices. It will be for the Competition and Consumer Protection Commission to decide in the circumstances of a particular contravention whether a fixed payment notice is appropriate or whether the contravention should instead be dealt by means of summary proceedings.

Amendment agreed to.

Section 3 deleted.

Section 4 agreed to.

Title agreed to.

24 October 2019

Bill reported with amendments.

Vice Chairman: I thank the Minister and her officials for attending the meeting.

Message to Dáil

Vice Chairman: In accordance with Standing Order 87, the following message will be sent to the Clerk of the Dáil:

The Select Committee on Business, Enterprise and Innovation has completed its consideration of the Consumer Protection (Gift Vouchers) Bill (2018) and has made amendments thereto.

The select committee adjourned at 2.28 p.m. *sine die*.