



# Bill Digest

## Consumer Protection (Gift Vouchers) Bill 2018

No. 142 of 2018

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### Abstract

The [\*Consumer Protection \(Gift Vouchers\) Bill 2018\*](#) aims to increase consumer protections relating to gift vouchers by amending the [\*Consumer Protection Act 2007\*](#). The Bill proposes to introduce a five-year minimum expiry period of validity for gift vouchers. The Bill also contains provisions which will prohibit terms in gift voucher contracts that require a gift voucher to be used in its entirety in a single transaction and terms which impose a charge for changing the name of a recipient on a gift voucher.

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## Contents

Summary .....	1
Table of Provisions .....	3
Background.....	4
Gift vouchers and consumer protection .....	4
The Unfair Contract Terms Directive .....	5
Previous efforts to regulate gift vouchers.....	6
Principal Provisions of the Bill .....	10
Gift vouchers .....	10
Consequential amendments to Act of 2007 .....	11
The Regulation of Gift Vouchers in other Jurisdictions .....	12
Australia .....	12
New Zealand .....	13
Canada.....	13
The United States.....	16
The United Kingdom.....	16

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## Summary

The [Consumer Protection \(Gift Vouchers\) Bill 2018](#) [the Bill] was published by the Minister for Business, Enterprise and Innovation, Heather Humphreys, [the Minister] on 19<sup>th</sup> December 2018. The aim of the Bill is to strengthen consumer protections relating to gift vouchers. The Government approved drafting of the Bill on 12th June 2018. Speaking on approval for drafting, the Minister stated:

“I am delighted that Government has today approved the drafting of this Bill, which I believe can make a real difference to consumers. At the moment, Ireland doesn’t have clear rules on the expiry dates of gift vouchers, which time and time again results in needless confusion and frustration. In some cases, individual vouchers aren’t even clear about their own cut-off point.”<sup>1</sup>

The Department carried out a public consultation in relation to gift voucher fees and expiry dates.<sup>2</sup> The closing date for submissions for this consultation was 31<sup>st</sup> August 2018. The main aim of the consultation was “to get information and views on gift voucher fees in order to assist the Minister in deciding on the level of fees, if any, that should apply.”<sup>3</sup> In the consultation information note, the Department suggest that some industry experts have estimated that the annual spend on gift vouchers may be as high as €600 million.<sup>4</sup>

No General Scheme was made publically available in relation to the Bill. No Pre-Legislative Scrutiny was carried out in relation to this Bill. However, in the course of the Joint Committee for Business, Enterprise and Innovation detailed scrutiny of the [Consumer Protection \(Amendment\) Bill 2017](#),<sup>5</sup> Department officials from the Competition and Consumer Policy section of the Department of Business, Enterprise and Innovation answered questions in relation to the public consultation and the Bill. They noted that the consultation received 44 responses<sup>6</sup> which was a relatively large amount for a consultation relating to consumer affairs. They noted that submissions were generally sent by representative bodies, with concerns being raised about “experience gift vouchers.”<sup>7</sup>

In December 2018, the Irish Times reported that the Bill was due to be delayed until after Christmas as it was the subject to intense lobbying by Ireland’s largest gift voucher supplier.<sup>8</sup> They reported that The Gift Voucher Shop, which owns One4All, had made detailed submissions and had submitted a legal opinion received from their solicitors. They also note that:

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<sup>1</sup> See Department Press Release, (12<sup>th</sup> June 2018) “Government approves General Scheme of Bill to introduce Minimum Five Year Expiry Date on Gift Vouchers”. Available [here](#).

<sup>2</sup> For more information about the public consultation, see Department Press Release, “Public Consultation on gift voucher fees and expiry dates.” Available [here](#).

<sup>3</sup> Department of Business, Enterprise and Innovation, (July 2018) *Consultation on Gift Vouchers Fees: Information Note* at p. 2. Available [here](#).

<sup>4</sup> *Ibid*, at p. 3.

<sup>5</sup> The full Committee hearing is available [here](#). The *Consumer Protection (Amendment) Bill 2017*, which is a Private Members Bill [PMB], and the Committee hearing is discussed in further detail below.

<sup>6</sup> *Ibid*. 24 submissions from individual consumers and 20 submissions from businesses.

<sup>7</sup> *Ibid*. Experience gift vouchers are vouchers for a specified experience such as a voucher for a free hot-air balloon trip.

<sup>8</sup> Conor Pope, “Minister’s plans for gift-voucher expiry change falters” *Irish Times* (3<sup>rd</sup> December, 2018). Available [here](#).

“In addition, it wrote submissions objecting to the removal of charges applied to cards if they are not used within 12 months which were then sent to the Department of Enterprise from several town chambers of commerce including Mallow, Thurles and Sligo.”<sup>9</sup>

Speaking on publication of the Bill, the Minister stated the following:

“Every year consumers lose out because their gift vouchers go out of date. Part of the problem is the great variation on expiry dates which can range from as little as 6 months to 12 months to 24 months. This often leads to confusion amongst consumers. By having a set 5-year expiry date on all gift vouchers, we will provide certainty to everyone involved.

It’s wrong that consumers should have to spend a voucher in full in one transaction. Similarly, it isn’t fair that businesses can penalise consumers simply because of a wrong letter in a name.

I’m glad that these two issues were brought to my attention during the public consultation so that we can now address them as part of this Bill.”<sup>10</sup>

The Bill proposes to amend the [Consumer Protection Act 2007](#) (the 2007 Act) by introducing a new Part 4A into the 2007 Act containing a five-year minimum period of validity for which gift vouchers must be valid before they can expire. The Bill will only apply to gift vouchers sold after the commencement of section 4 of the Bill. The Bill contains provisions which will prohibit terms in gift voucher contracts that require a gift voucher to be used in its entirety in a single transaction and terms which impose a charge for changing the name of a recipient on a gift voucher. The Bill requires traders to reimburse customers where the value remaining on a gift voucher following a transaction is greater than €1. The Bill excludes the following from the definition of gift voucher:

- vouchers for specified goods and services that are usable only for the purposes of the purchase, at a discounted price, from a specified trader or traders, on a specified date or for a specified period of a limited duration;
- vouchers supplied under a customer loyalty or promotional scheme; and
- vouchers supplied to a consumer by a trader as a refund for goods returned by the consumer.

#### **Further related Library & Research Service resources**

A Bills Tracker page on the Bill is available on the Library & Research Service’s internal website accessed [here](#) (available to those with access to the Oireachtas intranet).

<sup>9</sup> *Ibid.*

<sup>10</sup> See Department Press Release, (20<sup>th</sup> December 2018) “Minister Humphreys secures Cabinet approval for legislation to put a 5-year minimum expiry date on gift vouchers.” Available [here](#).

## Table of Provisions

Section	Title	Effect
1.	Definition	Provides for the <i>Consumer Protection Act 2007</i> to be referred to in the Bill as the “Act of 2007”.
2.	Gift vouchers	Provides for the introduction of a new Part 4A into the 2007 Act. This provides for a five-year expiry period for gift vouchers and prohibits terms in gift voucher contracts which require gift vouchers to be spent in a single transaction and which impose a fee for changing the name of a recipient on a gift voucher.
3.	Consequential amendments to Act of 2007	Amends <a href="#">section 67 of the 2007 Act</a> to allow for a violation of the provisions on gift vouchers to be defined as a “prohibited act or practice.” Amends <a href="#">section 90(1) of the 2007 Act</a> to allow for allow the publication of guidelines by the Competition and Consumer Protection Commission in relation to gift vouchers.
4.	Short title, collective citation and commencement	Standard provision that defines the short title of the Bill and provides for commencement by Ministerial order. Commencement orders may be limited to particular provisions of the Bill or purposes.

## Background

This section provides background information in relation to:

- gift vouchers and consumer protection;
- the Unfair Contract Terms Directive; and
- previous efforts to regulate gift vouchers.

### Gift vouchers and consumer protection

The Competition and Consumer Protection Commission [the CCPC] provide information to consumers relating to gift vouchers.<sup>11</sup> They highlight the risks that arise when purchasing gift vouchers. These include:

- The possibility that change will not be given;
- If the voucher is lost it may not be replaced by the outlet;
- Minimum usage rules may apply;
- You may need to top-up a gift card to activate it;
- The application of maintenance fees: and
- Problems arising from the shop closing down or changing ownership.

The CCPC recommend that gift vouchers are used as quickly as possible. They give the following advice in relation to expiry periods:

“Always check if there is an expiry date printed on the voucher and if not, ask the shop. Don’t assume that there is no expiry date just because it is not listed in the terms and conditions. Expiry dates vary widely. Some shops give you six months to redeem your voucher, so a gift voucher you received at Christmas and left in the bottom drawer will be no use by the following July. Other shops have far more flexible “no expiry” vouchers or may be willing to extend the expiry date if you ask. If you are giving the voucher to someone as a gift, remember to pass on any terms and conditions that came with the voucher.”<sup>12</sup>

### Electronic money gift vouchers

Electronic money gift vouchers<sup>13</sup> are regulated under the European Communities (Electronic Money) Regulations 2011 ([S.I. No. 183/2011](#)).<sup>14</sup> The Central Bank is responsible for enforcing these regulations.<sup>15</sup> These regulations provides for a wide range of consumer protections, including that funds held in electronic money gift cards must be held in separate segregated bank accounts.

In the opening statement of the officials from the Department of Business, Enterprise and Innovation to the Joint Committee on Business, Enterprise and Innovation during the detailed scrutiny of the *Consumer Protection (Amendment) Bill 2017* [PMB], it is noted that:

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<sup>11</sup> Available [here](#).

<sup>12</sup> *Ibid*.

<sup>13</sup> An example of an electronic money gift voucher is the One4All gift voucher.

<sup>14</sup> This implemented [EU Directive 2009/110/EC](#).

<sup>15</sup> Central Bank regulatory requirement and guidance for electronic money is available [here](#).

“A number of respondents to the recent consultation argued strongly for the exclusion of electronic money gift vouchers from the proposed Government legislation on the ground that their inclusion would involve a double regulation of these products that could lead to confusion as well as possible legal conflicts. The legal advice obtained by the Department is that the provisions of the proposed Government Bill on expiry dates and on the regulation of gift voucher fees are not in conflict with the provisions of relevant EU Directives, in particular the Electronic Money Directive.”<sup>16</sup>

The officials also noted that while there is no legislation which explicitly addresses gift vouchers and the fees which may arise, the regulation of gift vouchers does arise by way of general consumer protection law. In this regard, Mr Bill Cox with the Department noted:

“It is wrong to say there is no regulation of gift vouchers at the moment. Gift voucher contracts are subject to general consumer protection legislation and refusing to give change could be held to be an unfair commercial practice under the Consumer Protection Act and not telling people that they would not get change could be a misleading omission under the Consumer Protection Act. It could also be an unfair contract term under the unfair contract terms regulations.”<sup>17</sup>

## The Unfair Contract Terms Directive

The [Unfair Contract Terms Directive](#) is a minimum harmonising measure<sup>18</sup> that was introduced to provide greater consumer protections particularly in relation to contracts where the consumer has little or no bargaining power.<sup>19</sup> The Directive only relates to contracts between consumers and sellers or suppliers.<sup>20</sup> The Directive sets out that a contract term will be considered “unfair” where it has not been individually negotiated and “contrary to the requirement of good faith, it causes a significant imbalance in the parties’ rights and obligations arising under the contract, to the detriment of the consumer.”<sup>21</sup> Article 3(3) sets out that the list of contract terms provided in the Annex is “an indicative and non-exhaustive list of the terms which may be regarded as unfair.”

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<sup>16</sup> The opening statement of the officials from the Department of Business, Enterprise and Innovation to the Joint Committee on Business, Enterprise and Innovation in relation to their detailed scrutiny of the Consumer Protection (Amendment) Bill 2017 is available [here](#).

<sup>17</sup> See Joint Committee on Business, Enterprise and Innovation, detailed scrutiny of the Consumer Protection (Amendment) Bill 2017, available [here](#).

<sup>18</sup> Where a measure is subject to minimum harmonisation the measure when transcribed into national law can go beyond what is set out in the EU legal instrument in order to provide for greater consumer protection.

<sup>19</sup> The Unfair Contract Terms Directive is transposed into Irish law through the provisions of the European Communities (Unfair Terms in Consumer Contracts) Regulations 1995, ([S.I. No. 27/1995](#)). Regulation 3(7) notes that an indicative and non-exhaustive list of terms which may be regarded as unfair is set out in Schedule 3 of the Regulations. This reproduces the list of unfair terms from the Annex of the Directive. These Regulations have been amended by the European Communities (Unfair Terms in Consumer Contracts)(Amendment) Regulations 2000, ([S.I. No. 307/2000](#)), the European Communities (Unfair Terms in Consumer Contracts)(Amendment) Regulations 2013, ([S.I. No. 160/2013](#)) and the European Communities (Unfair Terms in Consumer Contracts)(Amendment) Regulations 2014, ([S.I. No. 336/2014](#)).

<sup>20</sup> See Article 1 of the Directive.

<sup>21</sup> See Article 3 of the Directive.



## Previous efforts to regulate gift vouchers

There have been a number of PMBs which have sought to regulate gift voucher contracts in order to address the consumer protection issues raised above. The regulation of gift vouchers has been the subject of three PMBs since 2009. Table 1 below sets out some of the key distinctions between the three PMBs and the Bill.

**Table 1. Gift voucher Bills**

Title of Bill	Sponsor	Expiry Periods	Fees	Restrictions of use	Other
<b><i>Consumer Protection (Gift Vouchers) Bill 2009</i></b>	Senators Phil Prendergast, Michael McCarthy, Dominic Hannigan, Alex White, Ivana Bacik, and Brendan Ryan	5 years	N/A	N/A	Amendment to section 55 of the <i>Consumer Protection Act 2007</i> .  Defeated at Second Stage
<b><i>Consumer Rights (Gift Vouchers) Bill 2017</i></b>	Deputy Catherine Murphy TD and Deputy Róisín Shortall TD	5 years	Prohibits fees in relation to the issue of a gift voucher, an inactive balance on the gift voucher and the repayment to the consumer of any credit balance on the gift voucher	N/A	No Second Stage debate at the time of publication
<b><i>Consumer Protection (Amendment) Bill 2017</i></b>	Deputy Niall Collins TD	5 years	Requires the trader to notify the consumer of any fees which apply in relation to the gift voucher	Requires the trader to notify the consumer of any restrictions of use which apply in relation to the gift voucher	Amendment to section 55 of the <i>Consumer Protection Act 2007</i> .  Has undergone detailed scrutiny and is at Committee Stage at the time of publication



<b>Consumer Protection (Gift Vouchers) Bill 2018</b>	Department of Business, Enterprise and Innovation	5 years	Prohibits fees relating to changing the name of the recipient of the gift voucher	Prohibits measures which require a gift voucher to be spent in a single transaction	Currently at Second Stage before the Seanad
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Source: Table compiled by Oireachtas Library & Research Service

The [Consumer Protection \(Gift Vouchers\) Bill 2009](#) [the 2009 Bill] was sponsored by Senators Phil Prendergast, Michael McCarthy, Dominic Hannigan, Alex White, Ivana Bacik, and Brendan Ryan. It was introduced in the Seanad on 5<sup>th</sup> November 2009. The 2009 Bill was defeated at Second Stage in the Seanad on 9<sup>th</sup> December 2009.<sup>22</sup> The 2009 Bill sought to amend [section 55 of the Consumer Protection Act 2007](#) by introducing an additional prohibited commercial practice of selling a gift voucher with an expiry period of less than five years. Section 55 transposes the list of prohibited commercial practices as set out in the [Unfair Commercial Practices Directive](#) [the UCPD].<sup>23</sup> The UCPD is a maximum harmonising Community measure.<sup>24</sup>

In the course of the Second Stage debate the following point was raised by then Minister of State at the Department of Enterprise, Trade and Employment, Deputy Billy Kelleher TD:

“... the UCPD is a maximum harmonisation measure. Effectively this precludes member states from going beyond the provisions of the directive by adopting additional or more extensive protections within the field harmonised by the directive. In this regard, it is important to note that the list of 31 practices deemed under the directive to be unfair in all instances, is an exhaustive list. It is not open to Ireland to unilaterally add to the list by amending section 55 of the Consumer Protection Act, as is proposed in this Bill.”<sup>25</sup>

The Department of Business, Enterprise and Innovation published the draft Scheme of a Consumer Rights Bill for public consultation on 25<sup>th</sup> May 2015.<sup>26</sup> The draft Scheme contained a number of provisions for the regulation of gift vouchers, **including a ban on expiry dates** in contracts for the supply of gift vouchers. Concerns were expressed by businesses about the impact of a complete prohibition on expiry dates during the consultation. The Department has noted that:

<sup>22</sup> The Second Stage debate of the *Consumer Protection (Gift Vouchers) Bill 2009* can be accessed [here](#).

<sup>23</sup> The European Commission have recently provided updated guidance on the UCPD, which is available [here](#).

<sup>24</sup> Maximum harmonisation is a principle of EU law. Where a measure is subject to maximum harmonisation the measure when transcribed into national law cannot go beyond what is set out in the EU legal instrument, even where it would provide greater protection. Annex I of the UCPD sets out a list of 31 unfair commercial practices which are prohibited. These are transcribed in section 55 of the Act of 2007. For an application of this principle with respect to the UCPD see Joined Cases C-261/07 and C-299/07 *VTB-VAB NV v. Total Belgium*, and *Galatea BVBA v. Sanoma Magazines Belgium NV*, (Judgment of 23 April 2009, at paragraph 52). Available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62007CJ0261>.

<sup>25</sup> See note 22.

<sup>26</sup> The Scheme and the Consultation Paper can be accessed [here](#).

“The Scheme of the Consumer Rights Bill had to take account of current European Union legislative proposals for Directives on consumer contracts for the supply of digital content and consumer contracts for the online and other distance sale of goods. These proposals, which were announced in May 2015 and published in December 2015, overlap very substantially with two of the main parts of the draft Scheme of the Consumer Rights Bill.

Given the slower than expected progress on these two EU proposals, the Minister is proceeding with a standalone proposal on the issue of the expiry dates for gift vouchers.”<sup>27</sup>

The [Consumer Rights \(Gift Vouchers\) Bill 2017](#) was sponsored by Deputy Catherine Murphy TD and Deputy Róisín Shortall TD. It was introduced in the Dáil on 21<sup>st</sup> November 2017. A Second Stage debate is yet to take place in relation to this Bill. The Bill provides for a **minimum five-year expiry period** for gift vouchers and a **prohibition on the charging of fees** in relation:

- to the issuing of a gift voucher;
- an inactive balance; and
- the repayment of credit balances to consumers.

The [Consumer Protection \(Amendment\) Bill 2017](#) was sponsored by Deputy Niall Collins TD. It was introduced in the Dáil on 28<sup>th</sup> November 2017. This Bill, like the 2009 Bill, proposes to introduce a **five-year minimum expiry period** for gift vouchers by amending section 55 of the 2007 Act. The Bill also proposes to introduce **obligations requiring the seller of a gift voucher to inform the buyer of any restrictions of use and/or fees that may apply in relation to the gift voucher**. The Second Stage debate took place on the 21<sup>st</sup> June 2018.<sup>28</sup> The Bill was not opposed by the Government and was referred to Committee Stage. On 2<sup>nd</sup> October 2018, the Joint Committee on Business, Enterprise and Innovation carried out detailed scrutiny of the Bill in accordance with [Standing Order 141](#).<sup>29</sup> The Committee heard oral submissions from Deputy Collins and from officials from the Department of Business, Enterprise and Innovation, who spoke in relation to both Mr Collins’ PMB and the results of the consultation process for the Government Bill.

Among the issues raised in the course of the debate on the PMB were:

- The possibility of providing for lost or stolen vouchers through the recording of gift vouchers by requiring individual retailers to keep a record or register of gift vouchers;
- The impact of a minimum five year validity period where the gift voucher relates to the provision of a good or services whose value is subject to fluctuation;
- The issue of where a business changes ownership or ceases to trade, resulting in the consumer being unable to redeem their voucher;
- The issue of refusing to give change in respect of a balance left over when using a gift voucher;
- Whether the PMB as an amendment to the section 55 of the 2007 Act would be incompatible with the UCPD;
- How to address any overlap that may arise with the E-Money Regulations; and

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<sup>27</sup> See Department Press Release, (12<sup>th</sup> June 2018) “Government approves General Scheme of Bill to introduce Minimum Five Year Expiry Date on Gift Vouchers”. Available [here](#).

<sup>28</sup> The Second Stage debate can be accessed [here](#).

<sup>29</sup> See Joint Committee on Business, Enterprise and Innovation, detailed scrutiny of the Consumer Protection (Amendment) Bill 2017, available [here](#).

- How the E-Money Regulations operate in respect of fees charged in respect of gift vouchers.

## Principal Provisions of the Bill

This section of the Digest examines the main provisions of the Bill. The Bill comprises four sections. Section 1 of the Bill sets out that reference to the “Act of 2007” refers to the *Consumer Protection Act 2007*. Section 4 of the Bill relates to the short title, collective citation and commencement of the Bill. These are standard provisions and for that reason they are not discussed below. A short synopsis of each provision is given in the Table of Provisions (above).

### Gift vouchers

Section 2 of the Bill will amend the 2007 Act by introducing a new Part 4A, relating to gift vouchers. The new Part 4A is split into two new sections. Section 66A(1) provides for the definition of gift voucher.<sup>30</sup> A gift voucher for the purposes of Part 4A is defined as:

“... any voucher, coupon or other document or thing supplied by a trader to a consumer 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 but does not include any instrument that is –

- (a) usable only for the purposes of the purchase, at a discounted price, of specified goods or services, from a specified trader or traders, on a specified date or for a specified period of a limited duration,
- (b) supplied under a customer loyalty or promotional scheme, or
- (c) supplied to a consumer by a trader by way of a refund for goods returned by the consumer to the trader.”<sup>31</sup>

Section 66A(2) sets out that the provisions of the Part 4A only apply to gift vouchers which have been supplied on or after the date that this subsection has been commenced.

Section 66B(1) sets out that a trader must not supply gift vouchers to consumers unless the gift voucher is not subject to an expiry date, or the expiry date is at least five years from the date the gift voucher is supplied.

Section 66B(2) provides that a trader supplying a gift voucher must provide the consumer with the expiry date on a “durable medium.” A durable medium is defined in section 66B(9) of the Bill and includes any medium capable of producing a record of the information.

Section 66B(3) provides that where a gift voucher is supplied with a shorter expiry date than five years, it shall be effective as if it had five-year expiry date.

Section 66B(4) provides that a trader shall not require a gift voucher to be redeemed in its entirety in a single transaction.

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<sup>30</sup> The terms “consumer” and “trader” are defined in [section 2 of the 2007 Act](#).

<sup>31</sup> For a gift voucher to be excluded under section 66A(1)(a) it must comply with all of the requirements set out. For example, a gift voucher for a half price, two night stay at a specified hotel in March would be excluded. However, a gift voucher, for a full price, two night stay at a specified hotel in March would not be excluded.

Section 66B(5) provides that where the balance remaining on a gift voucher is greater than €1, a trader must reimburse the balance of the gift voucher in cash or by way of another gift voucher.

Section 66B(6) provides that where a trader reimburses the balance of a gift voucher by way of a subsequent gift voucher, the subsequent gift voucher cannot have an expiry date which is earlier than the original voucher.<sup>32</sup>

Section 66B(7) provides that a trader must not charge a fee for the changing of a name on a gift voucher, where the gift voucher is subject to a requirement that it must be used by a named consumer.

## Offences

Section 66B(8) provides that a trader who breaches subsections (1), (2), (4), (5) or (7) commits an offence and is subject to the penalties provided in [Chapter 4 of Part 5 of the 2007 Act](#). Under [section 79 of the 2007 Act](#) a person guilty of a first offence is liable on summary conviction<sup>33</sup> to a maximum fine of €3,000 and/or a maximum term of imprisonment of 6 months. A person guilty of any subsequent offence is liable on summary conviction to a maximum fine of €5,000 and/or a maximum term of imprisonment of 12 months. A person guilty of a first offence is liable on conviction on indictment<sup>34</sup> to a maximum fine of €60,000 and/or a maximum term of imprisonment of 18 months. A person guilty of any subsequent offence is liable on conviction on indictment to a maximum fine of €100,000 and/or a maximum term of imprisonment of 24 months.

## Consequential amendments to Act of 2007

Section 3 of the Bill provides for an amendment to [section 67 of the 2007 Act](#). This is required to allow for a violation of the provisions on gift vouchers to be defined as a “prohibited act or practice” under Part 5 of the 2007 Act. Section 3 also amends [section 90\(1\) of the 2007 Act](#). This is required to allow for the publication of guidelines by the Competition and Consumer Protection Commission in relation to gift vouchers.

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<sup>32</sup> Where a gift voucher is subsequently issued in this way, it is not treated as a new gift voucher requiring a new five-year expiry period.

<sup>33</sup> A summary conviction relates to a conviction for an offence in the District Court before a Judge without a jury.

<sup>34</sup> A conviction on indictment relates to a conviction for an offence in the Circuit Court or the Central Criminal Court before a Judge and jury.

## The Regulation of Gift Vouchers in other Jurisdictions

A number of different jurisdictions have introduced legislation to regulate expiry periods for gift vouchers and requirements relating to fees that can be charged in respect of gift vouchers. This section focuses on developments in Australia, New Zealand, the US and Canada. These jurisdictions are highlighted as they are all common law jurisdictions where a variety of approaches having been implemented. Australia should be considered particularly relevant as its gift voucher laws have been recently updated, following a similar consultation process to Ireland.

### Australia

In Australia the federal government is considering introducing the *Competition and Consumer Amendment (Gift Cards) Bill 2018*. A public consultation was held between 26<sup>th</sup> July 2018 and 9<sup>th</sup> August 2018. In the course of the public consultation the Australian Government released an [exposure draft](#) (the equivalent of a General Scheme of a Bill) and explanatory materials. This Bill would have the effect of introducing a minimum three year expiry period on gift vouchers and banning certain post-purchase fees on gift vouchers. Gift vouchers will also be required to display expiry dates. The Bill will allow for regulations to be made providing exemptions for certain types of gift vouchers from the minimum expiration period and the ban on post-purchase fees.<sup>35</sup> The Bill also introduces penalties for non-compliance. These include fines of AUD 30,000<sup>36</sup> for a body corporate and AUD 6,000<sup>37</sup> for persons other than a body corporate for breaches of the legislation.<sup>38</sup>

The government of **New South Wales** has already introduced a mandatory minimum expiry period of three years for gift cards and gift vouchers sold to consumers in New South Wales, as well as a ban on post-purchase administration fees, which started on 31<sup>st</sup> March 2018.<sup>39</sup> A six month transitional period is currently in operation where businesses are allowed to use their existing stock of gift vouchers, but they must inform consumers that a minimum three year expiry period applies as well as a ban on post-purchase fees. The ban on post-purchase fees includes activation fees, account keeping fees, balance enquiry fees, telephone enquiry fees and fees applied when a card is inactive or not being used (sometimes called dormancy or inactivity fees). A breach of the new laws could attract a penalty infringement notice of AUD 550<sup>40</sup> and result in a maximum penalty of AUD 5,500<sup>41</sup>.

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<sup>35</sup> The Australian Government carried out a public consultation in respect of the regulations between 18<sup>th</sup> and 31<sup>st</sup> October 2018. An exposure draft of these regulations and an explanatory memorandum to the regulations is available [here](#).

<sup>36</sup> AUD 30,000 is the equivalent of €18,531.

<sup>37</sup> AUD 6,000 is the equivalent of €3,706.

<sup>38</sup> This is a strict liability offence, meaning that the intention of the party committing the offence is not relevant in determining whether the offence has been committed.

<sup>39</sup> For more information on the changes to gift voucher laws in New South Wales, see [here](#).

<sup>40</sup> AUD 550 is the equivalent of €340.

<sup>41</sup> AUD 5,500 is the equivalent of €3,397.

Similar legislation has recently passed through the parliament of **South Australia**.<sup>42</sup> The maximum penalty under the South Australian legislation for both failing to comply with the minimum 3 year expiry period and the ban on fees is a fine of AUD 5,000.<sup>43</sup> The Bill also provides for regulations exempting certain gift vouchers for the minimum expiry period and the ban on fees.

## New Zealand

The parliament of New Zealand is considering legislation similar to that being introduced by the federal government of Australia. The current position is similar to Ireland where there is no minimum period for which gift vouchers must be valid.<sup>44</sup> The New Zealand government's Consumer Protection website notes that there should not be any additional charges in respect of gift vouchers, but additional charges may be applied in relation to pre-paid cards.<sup>45</sup>

The Fair Trading (Gift Card Expiry) Amendment Bill 2018<sup>46</sup> is currently being considered by the New Zealand parliament. This is an opposition Member's Bill<sup>47</sup> modelled on the legislation in New South Wales. In the explanatory memorandum to the Bill under the "General Policy Statement" it states that:

"Many New Zealanders use gift cards as a welcome and convenient gift option, but, as many gift cards have an expiry date of 12 months or less, 1 in 5 recipients lose out because they don't redeem the full value before the card has expired. This provides for a windfall for the retailer, as they keep any remaining money."<sup>48</sup>

The Bill proposes a minimum three year expiry period on all gift cards and provides that where a gift cards has been issued with an expiry date of less than three years the term setting out the expiry date will be void and the expiry date will be taken to be three years from the date of sale of the gift card.

## Canada

Since 2011 the majority of provinces in Canada do not allow expiry dates on gift vouchers issued in the province.<sup>49</sup> Some provinces allow for exceptions to apply to this prohibition on expiry dates, with promotional gift cards that are supplied in relation to loyalty schemes and gift cards for a specific service (i.e. a gift card for a free haircut) generally being exempt.<sup>50</sup> There are also different

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<sup>42</sup> A copy of the *Fair Trading (Gift Cards) Amendment Bill 2018* which has progressed through the South Australia parliament is available [here](#).

<sup>43</sup> AUD 5,000 is the equivalent of €3,088.

<sup>44</sup> For more information relating to gift vouchers and consumer protection in New Zealand see [here](#).

<sup>45</sup> *Ibid*.

<sup>46</sup> Fair Trading (Gift Card Expiry) Amendment Bill 2018 is available [here](#).

<sup>47</sup> This is the New Zealand equivalent of a PMB. This Bill has been put forward by Jo Hayes MP.

<sup>48</sup> See note 46.

<sup>49</sup> For more information on consumer protection and gift vouchers in Canada, see <https://www.canada.ca/en/financial-consumer-agency/services/payment/gift-cards.html>.

<sup>50</sup> *Ibid*.



restrictions on the type of fees which may be charged depending on the territory. Some common fees which are permissible in many of the territories include:

- Fees for customising a gift card;
- Fees to replace a lost or stolen card; and
- Fees to maintain the balance on a pre-paid card after a certain period.

In **Alberta**<sup>51</sup> gift cards relating to promotional schemes and for specific services are exempt from the ban on expiration dates. Fees can only be charged for customisation of a gift card and to replace a lost or stolen gift card. Businesses cannot charge inactivity fees which reduce the value of the card over time. Businesses are required to accept gift vouchers as partial payment for goods which exceed the value of the gift voucher.

In **British Columbia**<sup>52</sup> an exemption to the ban on expiration dates applies in relation to gift cards for specific services, cards that are sold at a discount and cards sold for charitable purpose. Fees can be charged in relation to replacing lost or stolen cards and personalising cards. Fees can also be charged in respect of “mall cards”.<sup>53</sup> Sellers must also inform purchasers of any rules, conditions or limitations that apply in respect of their gift vouchers.<sup>54</sup>

In **Manitoba**<sup>55</sup> exemptions from the ban on expiry dates applies in relation to gift cards for specific services and cards where nothing of value was exchanged for the card at the time of purchase. Fees are only allowed in relation to replacing a lost or stolen card, and to customise a card. Information about limitations and restrictions on the use of the gift voucher must be provided to the purchaser when the card is sold. Failure to comply with any of the legal requirements relating to expiry dates, fees and disclosure can result in an administrative penalty in the form of a fine of between \$1,000 and \$5,000.<sup>56</sup>

In **New Brunswick**<sup>57</sup> there is a prohibition on expiration dates for gift vouchers. Exceptions apply where the gift voucher is for a specific good or service, where the gift vouchers are issued for charitable purposes and where a gift voucher is given out for promotional or advertising purposes. Fees can only be charged in respect of customising a gift card, replacing a lost or stolen gift voucher and in relation to multi-store gift vouchers which have not been used for fifteen consecutive months. Restrictions or limitations on the use of gift vouchers must also be disclosed before the gift voucher is sold.

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<sup>51</sup> For more information on consumer protection and gift vouchers in Alberta, see [http://www.servicealberta.gov.ab.ca/pdf/tipsheets/Gift\\_cards.pdf](http://www.servicealberta.gov.ab.ca/pdf/tipsheets/Gift_cards.pdf).

<sup>52</sup> For more information on consumer protection and gift vouchers in British Columbia see <https://www.consumerprotectionbc.ca/consumer-help/consumer-information-gift-cards/>.

<sup>53</sup> *Ibid.* Mall cards are cards that can be redeemed in any shop in a shopping centre. Charges that can be applied include a \$1.50 initial service fee upon purchase of the card and a maintenance fee of up to \$2.50 per month after fifteen months.

<sup>54</sup> *Ibid.*

<sup>55</sup> For more information on consumer protection and gift vouchers in Manitoba see <https://www.gov.mb.ca/justice/cp/cpo/info/cards.html>.

<sup>56</sup> *Ibid.*

<sup>57</sup> For more information about gift vouchers and consumer protection in New Brunswick see <http://www.fcnb.ca/gift-cards.html>.

In **Newfoundland and Labrador** [Regulation 14/11](#) was introduced in 2011. Regulation 3 prohibits expiry periods in relation to gift vouchers. Regulation 4 provides for exceptions to the prohibition where the gift voucher is issued or sold for charitable purposes, is issued for promotional or marketing purposes and in relation to a gift voucher for a specific good or service where the gift voucher was issued prior to the regulations coming into force in April 2011. Regulation 5 sets out that the value of the gift voucher must not be less than the payment made for the gift voucher by the purchaser. It sets out that fees can only be charged in respect of gift vouchers issued for charitable purposes, gift vouchers issued for marketing purposes, to replace a lost or stolen gift voucher and in relation to the customisation of a gift voucher.

In **Nova Scotia**<sup>58</sup> most gift cards cannot have expiry periods and fees cannot be charged in respect of most gift cards. The only exceptions to the ban on expiry dates are where the gift card is issued for charitable or marketing purposes. The only fees which are allowed to be charged are in relation to customisation of the card and where a replacement card is being issued. Certain information is also required to be printed on the gift card itself. This includes:

- The expiry date (if applicable);
- Fees (if applicable);
- The return policy that applies to any goods purchased with the gift card; and
- Contact details to enable the consumer check the balance on the card.

In **Ontario**<sup>59</sup> gift cards issued by financial institutions, gift cards for a specific service and gift cards issued for charitable purposes are the only exceptions to the ban on expiry dates. Businesses are not allowed charge dormancy or activation fees. Fees can only be charged in respect of customisation and replacement of gift vouchers. The rules in relation to gift cards in Ontario have recently been updated to clarify that they apply to reloadable gift cards and apply to gift cards even where they are not purchased as gifts.<sup>60</sup>

In **Prince Edward Island** gift cards are regulated under the [Gift Cards Act](#) and the [General Regulations](#). The Act provide for the general ban on expiry dates and fees, as well as disclosure requirements in relation to restrictions of use. The Regulations give greater detail and set out the exemptions which apply. This allows gift cards issued for charitable, marketing, advertising or promotional purposes to have an expiry date. Gift cards issued for a specific good or service can also have an expiry date. Fees may only be charged in respect of gift cards issued for charitable, marketing, advertising or promotional purposes, and where a gift card is being replaced or customised.

In **Québec** there is a prohibition on expiry dates for gift cards including cards for specific goods or services.<sup>61</sup> While the amount paid for a card can never be lost, a surcharge can be applied where the cost of providing the good or service has increased, provided that information on when the surcharge can be applied and the value of the card when purchased are both indicated on the card itself. Fees can generally not be charged, however, they are permissible in relation to the

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<sup>58</sup> For more information about gift vouchers and consumer protection in Nova Scotia see <https://novascotia.ca/sns/access/individuals/consumer-awareness/consumer-purchases/nova-scotia-gift-cards.asp>.

<sup>59</sup> For more information about gift vouchers and consumer protection in Ontario see <https://www.ontario.ca/page/buying-or-using-gift-cards>.

<sup>60</sup> See <https://www.ontariocanada.com/registry/view.do?postingId=26526&language=en>.

<sup>61</sup> See <https://www.opc.gouv.qc.ca/en/consumer/good-service/prepaid-card/good-service/expiration/rules/>.

customisation of cards and where a card which is lost or stolen is being replaced.<sup>62</sup> If the goods or services for which your card is redeemable are no longer available you are entitled to compensation from the retailer in the form of the monetary amount paid for the card or other goods or services to replace those which are not available.<sup>63</sup> It falls to the retailer to determine which of these two options they will apply.

In **Saskatchewan**<sup>64</sup> the only gift cards that can have expiry dates are those issued for charitable purposes or where the card has not been purchased (i.e. it is part of a rebate scheme). Any restrictions on the terms of use of a card must be clearly specified at the time of purchase of the card. Expiry dates are only permissible in relation to gift cards that are purchased for charitable purposes, where the card has not been purchased, for customisation and for replacement of lost or stolen cards.

## The United States

In the US federal rules were introduced in relation to gift vouchers in 2010.<sup>65</sup> These require all gift cards to be valid for a minimum of five years from the date the card was purchased or from the last date money was loaded onto the card. Inactivity fees can be charged after one year, but only once a month. Fees can also be charged to purchase a card or to replace a lost or stolen card. Any expiration date or fees must be clearly disclosed by the retailer on the card or its packaging. The federal rules provide a minimum level of consumer protection; however, some States have gone beyond these requirements and have introduced complete prohibitions on expiry dates.<sup>66</sup>

## The United Kingdom

By contrast to the regions discussed above, the UK<sup>67</sup> does not have specific legislation aimed at regulating expiry dates for gift vouchers. Gift vouchers in the UK are subject to the same EU Directives on consumer law as Ireland.<sup>68</sup> Which?<sup>69</sup> carried out research on forty different high street retailers in the UK and their gift voucher policies.<sup>70</sup> It found that expiry dates ranged between 10 years and 8 weeks. They noted that at one chain different branches suggested different expiry periods, both of which turned out to be incorrect.<sup>71</sup> They also highlighted problems where the expiry date was calculated from the date of purchase, however, this date was not included on the

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<sup>62</sup> See <https://www.opc.gouv.qc.ca/en/consumer/good-service/prepaid-card/good-service/fee/>.

<sup>63</sup> See <https://www.opc.gouv.qc.ca/en/consumer/good-service/prepaid-card/good-service/unavailable/>.

<sup>64</sup> For more information about gift vouchers and consumer protection in Saskatchewan see <http://fcaa.gov.sk.ca/consumers-investors-pension-plan-members/consumers/consumers-of-goods-and-services/gift-cards>.

<sup>65</sup> Set out in Title IV of the [Credit Card Accountability, Responsibility and Disclosure Act of 2009](#). For more information see <https://www.ftc.gov/news-events/media-resources/truth-advertising/gift-cards>.

<sup>66</sup> For example California. For a complete breakdown of the different regulations that apply to gift cards across different States, see <http://www.ncsl.org/research/financial-services-and-commerce/gift-cards-and-certificates-statutes-and-legis.aspx>. [Note that this resource was last updated in April 2016].

<sup>67</sup> More information about consumer protection and gift vouchers in the UK can be found at <https://www.which.co.uk/consumer-rights/advice/what-are-my-rights-with-gift-vouchers-and-cards>.

<sup>68</sup> *Supra* p.4-5.

<sup>69</sup> Which? is an independent UK based consumer rights group.

<sup>70</sup> Cavaglieri, "Gift cards: best and worst expiry dates" *Which?* (15 November 2017), available [here](#).

<sup>71</sup> *Ibid.*

card itself which would require the person who ultimately redeems the voucher to make further inquiries as to its expiry date. Table 2 (below) is a reproduction of the findings of the study conducted by Which?

**Table 2: Gift voucher expiry dates of major UK retailers**

Gift Voucher retailer	Validity period
Ocado <sup>72</sup>	8 weeks
JD Sports, Love2shop, <sup>73</sup> Pandora, Sunglasses Hut, Ted Baker, Westfield	12 months
Accessorize, Asda, Boots, Debenhams, Ernest Jones, Hotel Chocolat, House of Fraser, H&M, HMV, H.Samuel, John Lewis, Lush, M&S, Moss Bros, New Look, Next, River Island, Sainsbury's, Swarovski, The Body Shop, The Gap, Topshop, Waterstones, WHSmith	24 months
Argos, Intimissimi, Zara	3 years
Tesco <sup>74</sup>	5 years
Amazon	10 years
Aldo, Apple Store, Disney, Foot Locker, Selfridges	No expiry

Source: Which? (2017) See Cavaglieri, note 70

<sup>72</sup> Ocado indicated that it would be extending its expiry period to 12 months. See Cavaglieri, note 70.

<sup>73</sup> Love2shop expiry dates vary from 12 months to 4 years, depending on sales channel. See Cavaglieri, note 70.

<sup>74</sup> Tesco also sells branded gift cards with varying expiry dates found on the back of the card. See Cavaglieri, note 70.



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