



INTELLECTUAL PROPERTY

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# “Santa Clauses”: New Gift Voucher Law

by **lk-shields**

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The Consumer Protection (Gift Vouchers) Act 2019 (2019 Act) is the first piece of legislation to regulate the nation’s approx. €600 million annual spend on gift vouchers. Before its enactment, traders were generally free to determine the terms and conditions applicable to their gift vouchers.

The new legislation amends the Consumer Protection Act 2007 (2007 Act) and applies to printed and electronic vouchers, coupons, gift cards and similar, which are intended to be used for the payment of goods or services, or otherwise exchanged for goods or services.

## Key changes

The 2019 Act introduces the following key changes:

- Gift voucher contracts must say whether the gift voucher has an expiry date (which cannot be less than 5 years from purchase) or that there is no expiry date. If neither is stated, a 5-year expiry period will be deemed to apply.
- Details of the expiry date (or that none applies), the date of creation of the gift voucher contract and the period during which redemption is possible must be provided on the gift voucher itself or made available to the person on some other durable medium (e.g. email, SMS, paper T&Cs).
- Traders cannot specify that the full value of a gift voucher must be spent in a single transaction or place a limit on the number of vouchers a person can redeem in one transaction.
- If the balance remaining on a gift voucher after making a purchase is more than €1, and the gift voucher contract prevents the remaining balance being used for another purchase, the trader must reimburse the balance by way of monetary payment or a new gift voucher (bearing the same expiry date as the original one).
- Gift voucher contracts that require redemption by a named person must include (or else will be deemed to include) terms allowing (a) the named person to redeem the voucher even if there is a difference between that person’s name as it appears on the voucher and as it appears on his/her form of personal identification, and (b) the amendment or change of the name associated with the voucher without charge.
- Gift voucher contracts that provide for the replacement of lost or stolen vouchers must include (or else will be deemed to include) an expiry date not less than the one applicable to the voucher it replaces. However, traders are not obliged to replace lost or stolen vouchers.
- When a person gives a gift voucher to another person that recipient is entitled to exercise all rights under the gift voucher contract on the same terms as the original party to the gift voucher contract.

Gift voucher terms that are contrary to these new requirements will not be binding on or enforceable against the purchaser or recipient of a gift voucher.

## Failure to comply

Traders who fail to comply with the new legislation commit a criminal offence and are liable:

- on a first summary conviction, to a maximum fine of €3,000 and/or up to 6 months imprisonment.
- on a first conviction on indictment, to a maximum fine of €60,000 and/or up to 18 months imprisonment.

These criminal sanctions are in addition to the proceedings, penalties and remedies available to the CCPC and to consumers under Part 5 of the 2007 Act. The CCPC publishes details of enforcement actions taken against traders. Inclusion on its publicly available Consumer Protection List, together with any negative consumer sentiment shared across various media, will likely impact a trader's reputation, which carries its own cost.

## **Exclusions**

The 2019 Act does not apply to gift vouchers purchased before 2 December 2019. Also, the legislation excludes certain kinds of vouchers from its material scope:

- credit notes supplied as a refund for returned goods;
- vouchers issued as part of a customer loyalty or promotion scheme;
- vouchers that can only be used to buy specified goods or services, at a discounted price, from a specified trader, on a specified date or for a specified period of limited duration not exceeding 3 months (e.g. vouchers from deal websites); and
- electronic money gift cards, which are regulated under the European Communities (Electronic Money) Regulations 2011 (e.g. One-4-all gift cards).

Irish businesses should review the terms and conditions applicable to their gift vouchers without delay to ensure they are compliant with this new law.

As if the month of December was not already busy enough!

## About the Author