

# **The publication of data associated with the use of gender in the assessment of insurance risks**

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June 2007



HM TREASURY





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Information Policy Team  
St Clements House  
2-16 Colegate  
Norwich  
NR3 1BQ

Fax: 01603 723000

e-mail: [HMSOlicensing@opsi.x.gsi.gov.uk](mailto:HMSOlicensing@opsi.x.gsi.gov.uk)

## **HM Treasury contacts**

This document can be found on the Treasury website at:

**[hm-treasury.gov.uk](http://hm-treasury.gov.uk)**

For general enquiries about HM Treasury and its work, contact:

Correspondence and Enquiry Unit  
HM Treasury  
1 Horse Guards Road  
London  
SW1A 2HQ

Tel: 020 7270 4558

Fax: 020 7270 4861

E-mail: [public.enquiries@hm-treasury.gov.uk](mailto:public.enquiries@hm-treasury.gov.uk)

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# RESPONDING TO THE CONSULTATION

**1.1** The Department for Communities and Local Government (DCLG) has published proposals for implementing the EU Gender Directive through the Sex Discrimination Act 1975 (Amendment) Regulations 2007. This implements the principle of equal treatment between women and men in the access to and the supply of goods and services. DCLG's proposals are at [www.communities.gov.uk/consultations](http://www.communities.gov.uk/consultations). The deadline for implementation is 21 December 2007.

**1.2** In order to implement the Gender Directive DCLG proposes, among other things, to amend the Sex Discrimination Act relating to insurance to specify the circumstances under which insurance companies may charge different premiums or offer different benefits to men and women. One proposed condition is that data relevant to establishing the case for differential treatment by gender must be published and regularly updated in accordance with guidance issued by the Treasury. This consultation publishes that guidance in draft form.

**1.3** The Treasury would welcome comments on the proposed Guidance to insurance firms on how to meet their proposed obligation to publish data relating to the use of gender as a risk factor. It invites responses on whether the Guidance is clear and meets the reasonable expectations of consumers. The Guidance will be issued in accordance with proposed Regulations amending the Sex Discrimination Act 1975.

## How to respond

**1.4** This consultation would welcome the views of all stakeholders on any issue raised by this document. The consultation begins with the publication of this document and will last for a period of twelve weeks. Please respond by 3 September 2007. Responses should be addressed to:

Brian Garcia  
Savings and investment Team  
HM Treasury  
1 Horse Guards Road  
London  
SW1A 2HQ  
Tel 020 7270 5890  
e-mail: [brian.garcia@hm-treasury.gov.uk](mailto:brian.garcia@hm-treasury.gov.uk)

**1.5** This document can be found on the Treasury's website at [www.hm-treasury.gov.uk](http://www.hm-treasury.gov.uk). When responding, please state whether you are responding as an individual or as part of an organisation. If responding on behalf of a larger organisation, please make it clear whom the organisation represents and, where applicable, how the members' views were assembled.

## Confidentiality

**1.6** All written responses will be made public on HM Treasury's website unless the author specifically requests otherwise. In the case of electronic responses, general confidentiality disclaimers that often appear at the bottom of emails will be disregarded for the purpose of publishing responses unless an explicit request for confidentiality is made in the body of the response. If you wish, part, but not all, of your response to remain confidential, please supply two versions – one for publication on the website with the confidential information deleted, and other confidential version for the team managing the consultation.

**1.7** Even where confidentiality is requested, if a request for disclosure of the consultation response is made in accordance with the freedom of information legislation, and the response is not covered by one of the exemptions in the legislation, the Government may have to disclose the response in whole or in part.

**2.1** The following is the draft text that the Treasury proposes to issue, together with an annex and explanatory note.

### **Introduction**

**2.2** This guidance and explanatory note is issued by HM Treasury in accordance with section 45(3)(a) of the Sex Discrimination Act 1975 (as amended by Regulation 16 of the the Sex Discrimination Act 1975 (Amendment) Regulations 2007).

**2.3** The guidance applies to England, Wales and Scotland and Northern Ireland.

**2.4** Section 45(3)(a) permits discrimination in insurance between men and women in relation to premiums or benefits, under contracts entered into after 21 December 2007, subject to the conditions set out in the Act. One condition, set out in section 45(3)(a)(i), is that the use of sex as a factor in the assessment of risk is based on relevant and accurate actuarial and statistical data; a second condition, set out in section 45(3)(a)(ii) is that the data must be compiled, published (whether in full or summary form) and regularly updated in accordance with guidance issued by the Treasury. This guidance note constitutes the Treasury guidance on how data should be compiled, published and regularly updated.

### **Compilation, Publication and Updating of data**

**2.5** The Annex to this guidance describes the minimum content and form in which data should be published for each main policy type, and sets out the frequency with which the published data should be reviewed and updated. Firms may publish additional information according to their own particular circumstances, and to report on new products launched on the market, provided that the additional information accurately reflects the data on which gender-based risk assessments are undertaken.

**2.6** The data must be published in a form that is intelligible to someone who is not an insurance expert and must use plain English. The data may be presented in the form of a table, graph or chart accompanied by appropriate explanations. The publication must identify the source of the data and the period to which it relates. Technical terms must be explained.

**2.7** The data may be published by insurers on an individual or joint basis, provided that insurers comply with relevant competition law. The data may be collated and published by a third party on behalf of an individual insurer or on behalf of two or more insurers publishing collectively.

**2.8** The source and accuracy of the data must be attested by an authorised officer of the firm providing it, without the need for additional external or independent audit. The attestation should be confirmed in an explanatory note to the published data.

**2.9** The publication requirement may be fulfilled by making the data available by way of hard copy on request or by publication on the internet. The minimum data requirement set out in the Annex to this guidance must be provided free of charge.

**2.10** For products already available in the market on 21 December 2007, the data used as the basis for assessing risks or pricing contracts entered into or reviewed after 21 December 2007 must be published by 30 June 2008.

**2.11** For new products introduced into the market after 21 December 2007, any additional data used as the basis for assessing risks or pricing contracts for those new products must be published within 6 months of entering into the first new contract for such a product, or by such later date as may be agreed by the Treasury.

**2.12** The data must be reviewed and updated at intervals not exceeding the intervals set out in the Annex for each policy type.

### **General**

**2.13** Any enquiries or correspondence in connection with this Guidance note should be addressed to:

The Correspondence & Enquiry Unit  
2/W1  
HM Treasury  
1 Horse Guards Road  
London  
SW1A 2HQ  
Tel 020 7270 4558  
e-mail: [public.enquiries@hm-treasury.gsi.gov.uk](mailto:public.enquiries@hm-treasury.gsi.gov.uk)

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## ANNEX

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This Annex describes the minimum content and form in which data should be published for each main policy type, and sets out the frequency with which the published data should be reviewed and updated.

### Life Assurance and Annuities

**3.1** Publication may be by way of a table or chart illustrating the ratio of male to female mortality for the United Kingdom or an appropriate region. The published data must include historical differences in mortality by gender and by age. Age reference points should be single-year.

- the published data may aggregate all the different forms of annuity.
- The published data may aggregate all the different forms of life and mortgage protection insurance.

**3.2** The published data should be reviewed at intervals not exceeding two years and updated when significant changes are made to the underlying data.

### Critical illness insurance

**3.3** Publication may be by way of a table or chart illustrating either:

- the number and frequency of claims by gender and age ranges. Age ranges should not exceed ten years; or
- the ratio of male to female critical illness claims by single year age points.

**3.4** The published data may aggregate all the different forms of critical illness policies. It should be reviewed at intervals not exceeding two years and updated when significant changes are made to the underlying data.

### Income protection insurance (Permanent Health Insurance)

**3.5** Publication may be by way of a table or chart illustrating either:

- the frequency of claims and the length of claims (inception and termination) by age range. Age ranges should not exceed ten years; or
- the ratio of male to female long term sickness rates by single year age points.

**3.6** The published data may aggregate all the different forms of income protection policies. It should be reviewed at intervals not exceeding two years and updated when significant changes are made to the underlying data.

### Motor insurance

**3.7** The published data must include the average cost of claims per policy, by gender and by age ranges. Age ranges should not exceed 10 years. Data may aggregate all forms of cover and for all motor vehicles. The data may be published in a table or chart form.

**3.8** The published data should be reviewed at intervals not exceeding two years and updated when significant changes are made to the underlying data.

### **Private Health Insurance**

**3.9** We invite submissions on the assessment of morbidity risks and how this can be presented.

**3.10** [Review date intervals].

### **Other types of policy**

**3.11** For other types of policy not covered by the categories above, and for new types of policy outside the categories above, publication may be by way of a table or chart illustrating the proportionate differences in risk between males and females.

**3.12** The published data should be reviewed at intervals not exceeding two years and updated when significant changes are made to the underlying data..

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## EXPLANATORY NOTE

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### Introduction

**4.1** This explanatory note sets out the background to the requirement that data, on which the use of sex as a factor in the assessment of risk is based, are compiled, published and updated. This requirement must be satisfied wherever an insurer relies on sex as a factor in the calculation of premiums or benefits resulting in different premiums or benefits for men and women under contracts entered into after 21 December 2007.

### Background

**4.2** The Sex Discrimination Act 1975 (Amendment) Regulations 2007 implement Council Directive 2004/113/EC on the implementation of the principle of equal treatment between men and women in the access to and supply of goods and services.

**4.3** The Directive bans direct and indirect discrimination in the provision of goods and services based on sex, including less favourable treatment of women for reasons of pregnancy and maternity. There is an exception if providing goods and services mainly to members of one sex is justified by a legitimate aim, and the means of achieving that aim are appropriate and necessary.

**4.4** For insurance and related financial services, the Directive requires that Member States ensure that the use of sex as a factor in the calculation of premiums and benefits must not result in differences in individuals' premiums and benefits in all new contracts concluded after 21 December 2007.

**4.5** The recitals to the Directive recognise that certain categories of risks may vary between the sexes. In some cases gender is one, but not necessarily the only factor in the assessment of risk. Member States are permitted to exempt contracts insuring these types of risks from the rule of unisex premiums and benefits, as long as they can ensure that underlying actuarial and statistical data on which the calculations are based are reliable, regularly updated and available to the public.

**4.6** The Directive therefore permits Member States to derogate from the principle of non-discrimination in individuals' premiums and benefits, provided certain conditions are fulfilled. The Government has decided to exercise this derogation.

### Amendments to the Sex Discrimination Act 1975 (SDA)

**4.7** UK law already makes it unlawful to discriminate in the provision of goods and services, including insurance services. The Directive extends EU sex discrimination law to these activities for the first time and requires amendments to bring the existing UK provisions into line. Amendments to section 1 of the SDA provide for the Directive-based definitions of direct and indirect sex discrimination (s1(2)) to apply. Subsection 1(3), which lists the fields to which the s1(2) ban applies, now includes sections 29-31 (with certain exceptions). Section 29 provides in particular that it is unlawful to discriminate in the provision to the public of facilities by way of insurance.

**4.8** A ban on discrimination on the grounds of pregnancy and maternity is implemented by the insertion of a new section 3B.

**4.9** Section 45 of the SDA which provided an exception to Parts II to IV of the Act has been amended so that the existing exception becomes a new subsection (1) and no longer applies to discrimination in the fields covered by the Directive ie section 29-31 (with certain exceptions).

**4.10** But section 45(3)(a) provides that treatment falling within s29(1) is not unlawful where it involves discrimination under a contract of insurance or related financial services entered into after 21 December 2007 relating to differences in premiums and benefits and the following conditions are satisfied:

- (i) the use of sex as a factor in the assessment of risk is based on relevant and accurate actuarial and statistical data;
- (ii) the data referred to in (i) are compiled, published (whether in full or summary form) and regularly updated in accordance with guidance issued by the Treasury;
- (iii) the differences in treatment are proportionate having regard to the data in paragraph (i);
- (iv) the differences do not result from costs related to pregnancy or the fact that a woman has given birth at any time in the period of [52] weeks ending on the day the treatment occurs or begins.

**4.11** Section 45(3)(b) provides that treatment is also not unlawful under s29(1) if insurance or related financial services are provided only to members of one sex in relation to risks which only affect that sex.

**4.12** A claim that an insurer has unlawfully discriminated against a person contrary to s29 may be brought by way of civil proceedings for damages in a county court

## **Purpose of Guidance**

**4.13** The guidance issued by the Treasury sets out how data should be published and updated. It aims to ensure that:

- the extent of information disclosure is clarified;
- the source and accuracy of published data is validated;
- the form of the published data is consistent between different insurance providers;
- a date for review and updating is associated with each data set;
- the data is intelligible and accessible to consumers;
- insurance providers can participate in collective publication schemes;
- market entry and competition between insurance providers is not inhibited;
- product innovation is not curtailed;
- the guidance can be updated quickly to reflect market developments.

**4.14** Insurers use a variety of data to set premiums and benefits. They may use publicly available material such as Government and commercially available statistics, published research and material such as proprietary company research, claims and

other data. They adjust historical data through modelling and forward looking adjustments to segment the market and target customers. Individual risk pricing may take into account a very large number of factors.

**4.15** Gender is therefore one of a number of factors which are taken into account. The data published under the Sex Discrimination Act 1975 (as amended) must demonstrate the case for differing treatment based on gender, but it is highly unlikely to present a direct correlation with the premiums charged or the benefits obtained in individual cases. Individual policyholders wishing to discuss the relationship with their own premiums and benefits should contact their insurer.

**4.16** Section 45(3) requires that differences in treatment are proportionate having regard to the data on which the risk assessment is based. There should therefore be a close relationship between the data and premium and benefits. Whilst this condition concerns data relating to gender, any assessment as to whether it is met will need to take into account the effect of other factors affecting risk assessment, which are relevant to determining premiums or benefits in an individual case. Proportionality in the data relating to gender is therefore unlikely to be expressed as a clear linear relationship between a data table and the premiums and benefits applicable to an individual.

**4.17** In order to prepare the data for publication, a high level of aggregation is required to condense extensive and complex information into a single table that will be intelligible to the layman. By focusing on the aggregation of mainly historic data at a high level, it is intended first, to present the evidence to justify continuing differential treatment based on gender; and secondly to preclude the release of price sensitive information, or any information that might facilitate concerted practices by competitors in the market. In principle, the sharing of historic data is less likely to have competition effects. However, care must be taken in information sharing in order not to breach competition law<sup>1</sup>.

**4.18** Nothing in the Regulations or guidance precludes the development of new evidence and data to underpin new underwriting techniques or new insurance products. The Treasury will be prepared to update this guidance or issue new guidance to facilitate the introduction of new insurance products

## Application

**4.19** The guidance applies to insurance companies, reinsurance companies, Lloyds agents and Lloyds firms operating in the UK. It includes EEA-authorized firms who have exercised their right to passport into the UK. Separate Regulations apply to Northern Ireland.

**4.20** The guidance applies to contracts entered into after 21 December 2007. Certain long term contracts entered into before that date contain review clauses. For these types of contracts, the insurance industry has said that it expects to comply with the terms of the Directive on a voluntary basis when a review point is reached.

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<sup>1</sup> The relevant legislation is Article 81 of the EC Treaty and Chapter I of the Competition Act 1998 ('CA98'). Chapter I of the CA98 prohibits anti-competitive agreements between undertakings, decisions by associations of undertakings (i.e. trade associations) or concerted practices that prevent, restrict or distort competition to an appreciable extent in the EU or UK.

## Scope

**4.21** The guidance is relevant to any contract of insurance relating to an annuity, life insurance policy, accident insurance policy, or similar matter involving the assessment of risk where gender is a factor in the calculation of premiums and benefits.

**4.22** In the UK, the insurance product types in which gender is currently a factor in calculating premiums and benefits are those based on mortality risk (the probability of dying at a particular age), morbidity risk (the rate of sickness and incidence of disease), and the risk of road traffic accidents. The categories of insurance to which these risks apply are:

- Annuities
- Critical illness insurance
- Income protection insurance (permanent health insurance)
- Life assurance (life covers and mortgage protection)
- Motor insurance
- Private medical insurance

## General

**4.23** Any enquiries or correspondence in connection with this Guidance note should be addressed to:

The Correspondence & Enquiry Unit  
2/W1  
HM Treasury  
1 Horse Guards Road  
London  
SW1A 2HQ  
Tel 020 7270 4558  
e-mail: [public.enquiries@hm-treasury.gsi.gov.uk](mailto:public.enquiries@hm-treasury.gsi.gov.uk)

# A

## PARTIAL REGULATORY IMPACT ASSESSMENT

### Title of proposal

**4.24** The publication of data associated with the use of gender in the assessment of insurance risks.

### Summary

Insurance data publication	
Annual costs	£0.25 million
One-off costs	Less than £0.75 million
Total costs	£1 million
Key non-monetised costs	None
Annual benefits	None
One-off benefits	None
Key non-monetised benefits	Consumers will have access to accurate, reliable data demonstrating that the use of gender as a risk factor in insurance is justified
Net annual benefits	None
Net first year benefits	None

### What is the problem under consideration? Why is intervention necessary?

**4.25** The Gender Directive requires that the use of sex as an actuarial factor should not result in different insurance premiums and benefits for men and women. However, the Directive provides an opt-out from this requirement, provided that data supporting the use of gender as a risk factor are compiled, published and regularly updated.

**4.26** The Sex Discrimination Act (SDA) currently provides an exception that allows gender to be taken into account when assessing insurance risks. It is an established feature of the UK insurance market that is understood and accepted by consumers. Moving to unisex premiums and benefits would restrict insurers' ability to price risks efficiently. It would be likely to disadvantage both women and men by raising premium rates overall. The UK therefore intends to make use of the opt-out.

### Policy objectives and intended effects

**4.27** To enforce the data publication requirements, the treatment of insurance in the SDA will be updated to require insurers who use gender as a risk factor to compile, publish and update data that support sex-based differential in insurance premiums and benefits. The options below consider how the requirement might be met.

**Option 1: Rely on existing published data sources**

## Benefits

This option has the lightest regulatory touch, involving no change. There are no implementation costs.

## Costs

The public data is incomplete, widely scattered and inaccessible. Insurers rely on their own estimates and experience as well as or instead of published sources. Even if the existing sources were brought together, they would be difficult for a non-expert to interpret. Consumers would not be clear whether or how the published sources relate to differences in premiums and benefit levels. So this option does not fully meet the requirements of the Directive.

**Option 2: Mandatory record-keeping and full disclosure** of all underwriting data by insurance companies, with new reporting, inspection and compliance functions for the Financial Services Authority or another body.

## Benefits

This option exceeds the minimum requirements of the Directive in terms of the volume of data to be collected and published, and extension of the role of the Regulator, the Financial Services Authority (FSA) or another enforcement body.

## Costs

We estimate the one off set-up costs to be £11.5m. This covers establishing integrated reporting systems by 151 insurance companies in the life, annuities, motor health and travel sectors based on £100,000 for a large company and £50,000 for a small company. The FSA's set up costs are estimated to be in region of £50,000.

Annual running costs are estimated to be £3.5m. These are composed of 100 senior manager and 150 administrator hours for a large company and 50 senior manager and 100 administrator hours for a small company, with associated overheads of 30%; (£1.8m); compliance costs (£0.2m); publication costs (£1.5m) and FSA monitoring costs (£5k).

There would also be a negative impact on competition in the insurance sector with a risk of breaches of competition law in sharing price-sensitive information. The quality of an insurer's actuarial data is one of its main competitive tools and incentives to develop and improve internal data and underwriting techniques would be reduced if they had to be disclosed. This in turn would reduce the quality of insurance provision. Although it is difficult to put an accurate figure on this, it is likely to be qualitatively and quantitatively significant.

**Option 3: An obligation on insurance companies to publish data based on guidelines issued by the Government.**

It is proposed inform consumers by enabling insurers to publish high-level summary data either individually or collectively. To balance consistency of reporting with the flexibility to accommodate market developments and widely differing requirements for different sectors, the Government proposes to issue guidance setting out the scope, form, content, timing and manner of data publication. This will enable insurers to demonstrate publicly that they are using reliable, accurate up to date data and meet the requirement laid on the Government to ensure that accurate data are compiled, published and regularly updated.

### Benefits

Consumers will benefit by having access to simple summaries, rather than raw data, justifying proportionate differences in premiums and benefits based on gender. This option is a lighter touch regulatory requirement than Option 2. It gives insurers discretion to publish data individually or collectively, and to adapt reports to their own circumstances based on broad reporting guidelines.

### Costs

We assume that almost all insurers will choose to enter into collective publication arrangements through the Association of British Insurers (ABI) or another agency. The ABI has indicated that it is prepared to enter into such arrangements and is preparing a data collection and publication scheme.

Much of the data collection infrastructure is already in place. Further one off set-up costs are estimated to be £720,000 representing the development of some internal reporting systems (£5,000 for a large firm and £2,000 for a small firm) together with the development of a central collection and publication system (£110,000).

Estimated annual running costs are £250,000. These are based on 15 senior manager and 20 administrator hours for a large company and 5 and 10 hours respectively for a small company (£235,000), including associated overheads of 30%; central staff costs (£5,000) and central publication costs (£10,000).









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