

# **The publication of data associated with the use of gender in the assessment of insurance risks: Government response to consultation**

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November 2007



HM TREASURY





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# EXECUTIVE SUMMARY

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The Government's consultation on the publication of data associated with the use of gender in the assessment of insurance risks closed on 4 September 2007. 16 responses to the consultation were received, mainly from insurance companies and their representatives, and consumer organisations. The Government is grateful to all those who have responded.

The Gender Directive specifies the circumstances in which insurance companies may charge different premiums or offer different benefits to men and women. Among other conditions, it specifies that, for contracts entered into after 21 December 2007, data relevant to the use of sex as an actuarial factor are compiled, published and regularly updated.

The Government will amend the Sex Discrimination Act 1975 through Regulations<sup>1</sup> to provide that data relevant to the use of sex as an actuarial factor must be compiled, published and regularly updated in accordance with guidance issued by the Treasury. It is publishing guidance in this response to the consultation to clarify how insurance companies should meet their obligations. The guidance will apply to England, Scotland, Wales and Northern Ireland.

Following consultation, the Government has decided the following:

- A high level of aggregation is necessary to prepare underwriting data for publication. It is unlikely that requiring publication of insurers' detailed databases would be in the public interest. Firstly, such information would be very difficult for non-experts to interpret. Secondly, requiring the disclosure of commercially sensitive information could adversely affect competition in insurance markets, damaging consumers' interests;
- In order to secure consistency in reporting between insurers and between different policy types, and so that publications are intelligible to the man or woman in the street, the approach that will be taken is to present the ratio of male to female information,<sup>2</sup> rather than absolute amounts;
- Insurers may participate in group publication schemes, subject to certain safeguards. This is particularly important for information where a comparison of male to female claims between individual insurers might otherwise produce a confusing picture, given relatively low claims frequencies.

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<sup>1</sup> Northern Ireland equality is a devolved transferred matter, and there are separate but broadly corresponding sex discrimination provisions in NI legislation. Any reference in this document to the Sex Discrimination Act 1975 (SDA) which applies in Great Britain, can be read across to the corresponding provisions of the Sex Discrimination (Northern Ireland) Order 1976 (SDO). Similarly, references to the proposed Sex Discrimination Act 1975 (Amendment) Regulations 2007 can be read across to the proposed Sex Discrimination Order 1976 (Amendment) Regulations (Northern Ireland) 2007.

<sup>2</sup> The female risk or cost divided by the male risk or cost

- A number of respondents have questioned whether the Gender Directive applies to group policies concluded by employers for the benefit of their employees. The Directive is concerned with access to and the supply of goods and services. It does not apply in the employment field. It applies only to insurance and pensions that are private, voluntary and separate from the employment relationship. The terms on which employees are covered by group insurance policies concluded between an employer and an insurer are not therefore covered by the Regulations or the Treasury's guidance; and
- A number of industry respondents suggested that the regulations or guidance should make clear that they do not apply to long term contracts that have reviewable premiums, provided they were entered into on or before 21 December 2007. The Directive requires that all new contracts entered into after that date are subject to the data publication requirement. It is a matter of law whether a review or renewal amounts to a new contract or not, depending on the circumstances of the individual case. The Government is not persuaded that contracts whose terms and conditions may be re-set to varying degrees at certain points during their life should all be exempt when a review is undertaken after the Regulations have taken effect. The Government expects that variations of the premiums or benefits which amount to a new contract should be undertaken in conformity with the law at the time that the variation takes place.

The Government is aware that premium rates and policy terms and conditions may be in quotations offered up to 90 days before 22 December 2007. The Treasury's guidance is therefore published today, with this response.

The Government intends to legislate through implementing Regulations, to be known as the Sex Discrimination Act 1975 (Amendment) Regulations 2007. The Regulations are expected to enter into force on 21 December 2007. The changes to the law referred to in this response and guidance note are therefore proposals only. The guidance may be updated to reflect any changes that may be made to the draft Regulations when they are enacted.



# INTRODUCTION

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**1.1** In the consultation on the publication of data associated with the use of gender in the assessment of insurance risks, published in June 2007, the Government sought the views of the insurance industry, its representatives, consumer groups and consumers on how firms should meet the proposed obligation to publish data.

**1.2** In this paper we:

- Explain the background to the consultation and the aim of the Directive; and
- Explain the key concepts, the main issues raised by respondents to the consultation and the Government's response.
- Publish annexes covering:
  - The Treasury's guidance note;
  - A regulatory impact assessment; and
  - A list of respondents.

**1.3** The Sex Discrimination Act 1975 (Amendment) Regulations 2007 are expected to enter into force on 21 December 2007.

**1.4** The Government received sixteen responses to the consultation and is grateful to all those who spent time and effort in responding. The majority of responses came from the insurance industry. The Government has sought to balance the industry's views with consumers' interests and the need to implement the Directive fully.



# 2

## THE DIRECTIVE

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**2.1** Council Directive 2004/113/EC of 13 December 2004 implements the principle of equal treatment between men and women, extending European sex discrimination law from the field of employment to the access to and supply of goods and services. Member States must implement it by 21 December 2007.

**2.2** Financial services firms will be subject to the same requirements as any other service provider. However, the Directive permits Member States to exercise a derogation to continue to allow gender-based differences in insurance, provided they ensure that data relevant to the use of gender as a discriminating factor are published. The Government intends to exercise that derogation.

**2.3** The Sex Discrimination Act 1975 already obliges insurers to base sex discrimination on evidence. However, Implementing the Directive's provisions requires amendments to the goods, facilities and services provisions of the Act to:

- bring the exemption for insurance into line with the Directive text. The principal changes provide that:
  - differences in premiums and benefits are proportionate;
  - gender as a risk factor is based on relevant and accurate actuarial and statistical data; and
  - ensure the relevant data are compiled, published and regularly updated;
- ban pregnancy and maternity discrimination; and
- ban discrimination against transsexuals.

**2.4** This response deals only with the data publication requirement. The insurance opt-out and other necessary changes will be implemented through Regulations made under s2(2) of the European Communities Act 1972. The Regulations will amend s45 and s2A of the Sex Discrimination Act 1975. The Government has consulted on the changes through its Discrimination Law Review Green Paper<sup>1</sup> published on 12 June.

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<sup>1</sup> Discrimination Law Review: A Framework for Fairness: Proposals for a Single Equality Bill for Great Britain - A consultation paper. 12 June 2007. The consultation closed on 4 September 2007.



# 3

## RESPONDENTS' VIEWS AND THE GOVERNMENT'S RESPONSE

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**3.1** In this chapter we explain the key concepts, the main issues raised by respondents to the consultation, and the Government's response. These include:

- the extent to which the underlying data can be summarised;
- exemption of group policies;
- the meaning of proportionality;
- contracts concluded on or before 21 December 2007;
- product innovation; and
- composition of published data.

**3.2** The consultation paper set out the Government's initial interpretation of the scope and main data publication requirements of the Directive. A number of respondents sought further clarification of, and offered views on, these interpretations. These views and the Government's responses are detailed below.

### Underlying data

**3.3** One respondent called for mandatory record keeping and full disclosure of underwriting data and assumptions by insurance companies. They said that the proposed publication of high level aggregate data would not comply with the requirements of the Directive, which require the detail to be published. Without this, they argued that it would not be possible to determine the basis on which premiums were calculated, and the implementation of the Directive would lack the specificity, precision and clarity needed to achieve legal certainty.

**3.4** Article 5(2) obliges Member States to ensure that accurate data relevant to the use of sex as a determining actuarial factor are compiled, published and regularly updated. Recital 19 enjoins Member States to ensure that underlying actuarial and statistical data on which the calculations are based are reliable, regularly updated and available to the public.

**3.5** However, the underlying data does not often exist in publishable form. Insurers maintain large databases of risk information as well as using publicly available information. It is self evident that the underlying data on which their calculations are based must be aggregated to some degree, both to extract relevant gender information and to present it in intelligible form. For this reason, the Government is not aware of any Member State taking the approach of requiring raw data to be published, and does not consider that the Directive requires this approach. The question is: what is the appropriate level of detail in the information to be reported?

**3.6** In developing its proposals the Government has sought to achieve three aims:

- i. to comply fully with the Directive in order to provide a means by which consumers can see accurate, up to date evidence that justifies continuing differences in insurance premiums or benefits between men and women;

- ii. to avoid the release of commercially sensitive information that would have the effect of reducing competition in the insurance market or facilitating concerted practices by insurers to the detriment of consumers. In particular, it is essential to avoid potential breaches of the Competition Act 1998 by facilitating the sharing of detailed risk information;
- iii. to comply with Better Regulation principles by weighing the relative costs and benefits of the options for implementation, and not over-implementing the Directive.

**3.7** The Directive is not intended to give consumers a right of access to the data concerning the underwriting of their own policy. Nor is it intended to compel insurers to explain how they make their actuarial calculations. Rather it requires insurers to demonstrate that their information justifies proportionate differences in individuals premiums and benefits based on gender.

**3.8** The Government's response is therefore to mandate the publication of high-level summary data. It has sought to condense all the relevant data in a single measure of relative male to female risk so that the information can be presented in a form that is readily understandable to the man or woman in the street. This information would provide a basis for a consumer who felt unfairly discriminated against to challenge an insurer's decision. The Regulations will provide that insurers who do not publish this information, or do not participate in a collective publication scheme, will not be able to use gender as an underwriting factor.

### Group policies

**3.9** A number of respondents sought clarification of the extent to which group insurance policies, which are taken out by employers for the benefit of employees, fall within the Directive's scope.

**3.10** The Directive applies only in the field of access to, and supply of, goods and services. Article 3(4) provides that it shall not apply to matters of employment and occupation. Nor should it apply to matters of self-employment, insofar as they are covered by existing Community legislation. Recital 15 states that the Directive should apply only to insurance and pensions that are private, voluntary and separate from the employment relationship.

**3.11** The terms on which employees are covered under group insurance contracts concluded between an insurer and an employer are not therefore subject to the data publication requirement of the regulations or the Treasury's guidance.

### Proportionality

**3.12** A number of respondents sought clarification of the meaning of Directive Article 5(2) which permits 'proportionate' differences in individuals premiums and benefits where gender is a factor in risk assessment. Two insurers asked whether this would affect their ability to target their marketing or pricing in favour of a specific gender.

**3.13** The Government has replicated the language of the Directive in its Regulations. It will be for the courts ultimately to determine the meaning of 'proportionate differences'. This cannot be pre-empted by any interpretation or guidance that the Government might issue.

**3.14** It would be wrong to mislead by giving the impression that the issue is clearer than it is. However, the Treasury's guidance has been expanded to explain that, in the Government's view, the term 'proportionate' implies that there is some tolerance around the degree to which a differential may be held to be proportionate, and that it should be symmetrical above or below a data point, provided that it is fair and reasonable.

**3.15** Marketing practices targeted at men or women are permissible under the Sex Discrimination Act 1975, and the 2007 Regulations, provided that premiums and benefits comply with the provisions of the Act. Assymetric pricing, precautionary or temporary loadings, for example to attract members of one sex, or to re-balance the risks in an insurance pool, are unlikely to meet the proportionality requirement if they are not objectively justifiable.

**3.16** As suggested by a number of respondents, the Treasury's explanatory note has been expanded to show in more detail why there is unlikely to be a direct linear relationship between published gender differentials and the differential applied by a specific insurer to a specific risk.

### Long-term contracts

**3.17** A number of respondents asked for clarification of the precise meaning of the applicability of the regulations to contracts entered into after 21 December 2007. There are two issues:

- i) meaning of 'contracts entered into after 21 December 2007';

The date on which an insurance policy is made is a contractual matter determined by general contract law. Neither this response nor the Treasury's guidance should be taken as guidance on those wider principles. However, in general terms, an insurance contract is entered into or made when both parties have communicated to each other that they accept the proposed terms of the contract;

- ii) long term contracts subject to review or renewal;

A number of industry respondents pointed out that the Directive does not have retrospective effect. They said that the regulations or guidance should make clear that they do not apply to on-going contracts that have renewable or reviewable premiums, provided they were entered into on or before 21 December 2007; and

The Directive requires that all new contracts entered into after 21 December 2007 are subject to the new requirements. It is a matter of law whether a review, renewal or re-setting of the terms amounts to a new contract or not, depending on the circumstances of the individual case. The Government is not persuaded that all contracts whose terms and conditions may be re-set to varying degrees at certain points during their life should automatically be exempt when a review is undertaken after the Regulations have taken effect. The Government would expect that a variation of the premiums or benefits amounting to a new contract should be undertaken in conformity with the law at the time that the variation takes place.

## Product innovation

**3.18** A number of respondents suggested that the Treasury's guidance should be more permissive in scope to promote product innovation. The suggestions were: (i) to clarify that non-UK data might be admissible in certain circumstances; and (ii) a longer time be permitted before publication of data relating to a new product type, to protect the innovating company's first mover advantage.

**3.19** It is already industry practice to use non-UK data to the extent that it may be provided by reinsurers on a regional basis; and non-UK data has been used to develop new products like income protection or critical income insurance in the past. The Treasury's guidance will reflect this.

**3.20** The Government has been careful to frame the terms of the data publication obligation to prevent it being used for anti-competitive practices. It is not persuaded that a requirement to publish a high level summary will act to deter innovation in a dynamic and competitive market. In any case, the Directive does not provide for any such special treatment. So it will not lengthen the six-month period by which data relating to a new product to come to market must be published.

## Composition of the published data

**3.21** The Government is grateful for the many expert and detailed suggestions for improving the Treasury's guidance on the specification of the data to be published. These are reflected in the revised guidance where appropriate.

**3.22** In order to secure consistency in reporting between insurers and between different policy types, and so that publications are intelligible to the man or woman in the street, the approach that has been taken is to present the ratio of male to female information<sup>1</sup>, rather than absolute amounts.

**3.23** The data relating to the "assessment of risk" should focus on the assessment of claims costs, based on claims frequencies and claims severities, including the future cost of current claims Loadings flowing from expenses, capital and solvency requirements, tax and tax allowances, or acquisition costs are not held to be relevant to the assessment of risk based on actuarial and statistical data relating to differences between men and women.

**3.24** Two respondents suggested that the Treasury's guidance make clearer that insurers may make an allowance for future trends, such as assumptions relating to future changes in mortality and medical developments. This was a further reason why there was not a direct correlation between historic data and premiums.

**3.25** The Government is aware that historic data may be adjusted for expected future changes and has revised the Treasury's guidance to reflect this. The expected future cost of current claims should be included in the published data. However, assumptions or forecasts about the path of trends that may affect future claims costs do not constitute factual or empirical data and do not form part of the data that should be published to justify differential treatment of men and women.

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<sup>1</sup> The female risk or cost divided by the male risk or cost

# 4

## GUIDANCE

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### Introduction

**4.1** 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 Sex Discrimination Act 1975 (Amendment) Regulations 2007).

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

**4.3** Section 45(3)(a) of the Act 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.

### Scope

**4.4** The guidance is relevant to contracts 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. Policies in which premiums and benefits are payable without discriminating on gender grounds, even if gender is a factor in the assessment of the risks, are not subject to this guidance. Nor does the guidance apply to discrimination in the field of employment: The terms on which employees are covered by group insurance policies concluded between an employer and an insurer are not covered by this guidance. The guidance therefore applies to insurance and pensions that are private, voluntary and separate from the employment relationship.

### Data publication obligations

**4.5** This guidance describes below 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.

**4.6** 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.

**4.7** The data may be published by insurers on an individual and/or joint basis, provided that insurers comply with relevant competition law. The data may be collated and published by a third party appointed by an individual insurer or appointed by two or more insurers publishing collectively. Appointees must make arrangements to hold the data securely, prevent unauthorized access to it and use it only for the purpose specified. In particular, there must be no access to or sharing by insurers or their agents of any data that they have contributed.

**4.8** 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.

**4.9** 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.

### Applicable dates

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

**4.11** Certain long term contracts provide that their terms and conditions may be re-set to varying degrees at intervals during their life. Where such a review or a variation of the terms constitutes entry into a new contract, and takes effect after 21 December 2007, it should be undertaken in conformity with the Regulations that are in place on the day that a new contract is made.

**4.12** 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. This may reflect industry practice to use non-UK data to the extent that it may be available on a regional or other basis to support the introduction of new products into the UK market.

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

### Compilation, Publication and Updating of data

**4.14** This section 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

**4.15** Publication may be by way of a table or chart illustrating the ratio of male to female mortality for insured risks in the United Kingdom or an appropriate region. The published data must illustrate recent differences in mortality by gender and by age. It may be based on graduated data using single year age points or raw data by age ranges not exceeding five years up to age 75 and 10 year age ranges thereafter.

**4.16** The published data may aggregate different forms of annuity and life assurances.

**4.17** The published data should be reviewed and, if necessary, updated at intervals not exceeding four years.

**Critical illness insurance** 4.18 Publication may be by way of a table or chart illustrating the ratio of male to female critical illness rates for insured risks in the United Kingdom or an appropriate region. The published data must illustrate recent differences in the incidence and cost of critical illness by gender and by age. It may be based on graduated data using single year age points or raw data by age ranges not exceeding five years up to age 75 and 10 year age ranges thereafter.

4.19 The published data may aggregate different forms of critical illness insurance.

4.20 The published data should be reviewed and, if necessary, updated at intervals not exceeding four years.

**Income protection insurance (permanent health insurance)** 4.21 Publication may be by way of a table or chart illustrating the ratio of male to female long term sickness for insured risks in the United Kingdom or an appropriate region. The published data must illustrate recent differences in the incidence and cost of long term sickness by gender and by age. It may be based on graduated data using single year age points or raw data by age ranges not exceeding five years up to age 75 and 10 year age ranges thereafter.

4.22 The published data may aggregate different forms of income protection insurance.

4.23 The published data should be reviewed and, if necessary, updated at intervals not exceeding four years.

**Motor insurance** 4.24 Publication may be by way of a table or chart illustrating the ratio of male to female average costs per policy. The data should be broken down by age ranges not exceeding five years, with a single age range for ages 80 and above.

4.25 Data may aggregate all forms of cover and for all relevant motor vehicles. It should indicate the accident years reported.

4.26 The published data should be reviewed and, if necessary, updated at intervals not exceeding three years.

**Private medical insurance** 4.27 Publication may be way of a table or chart illustrating the ratio of male to female average claims costs in 5 year age bands, with all short term (up to five years) medical insurance products combined.

4.28 The published data should be reviewed and, if necessary, updated at intervals not exceeding three years.

**Other types of policy and new policies** 4.29 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. Where relevant, the data may reflect evidence from non-UK sources on which it is reasonable to rely.

4.30 The published data should be reviewed and, if necessary, updated at intervals not exceeding two years.

**Updating this guidance** 4.31 This guidance does not have an expiry date. The Treasury will monitor its operation and review and update it from time to time as may be appropriate in the circumstances, including to take account of new products or product developments, as may be necessary at any time. Insurers who require further guidance about this are invited to approach the Treasury.

## Background

**4.32** 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.

**4.33** 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 only or primarily to members of one sex is justified by a legitimate aim, and the means of achieving that aim are appropriate and necessary.

**4.34** 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. However, 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.

**4.35** 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)

**4.36** 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.

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

**4.38** 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).

**4.39** 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); and
- (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 26 weeks ending on the day the treatment occurs or begins.

**4.40** 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.

**4.41** 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

**4.42** 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;
- insurance providers can continue to use commercially meaningful proprietary data; and
- the guidance can be updated quickly to reflect market developments.

**4.43** 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. The data may be from UK or non-UK sources. They adjust historical data through actuarial modelling and forward looking adjustments to segment the market. Individual risk pricing may take into account a very large number of factors.

**4.44** Gender is therefore one of a number of factors which are taken into account. The Regulations amending the Sex Discrimination Act 1975 require that, where insurers offer different premiums or benefits as between men and women, data relating to gender on which the assessment of risk is based is compiled and published. This data 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. Insurers may wish to prepare an explanation for the

benefit of individual policyholders wishing to discuss the relationship with their own premiums and benefits.

**4.45** Section 45(3) requires that differences in treatment are proportionate having regard to the data on which the risk assessment is based. The term ‘proportionate’ implies that there is some tolerance around the degree to which a differential may be held to be proportionate, and that it should be symmetrical above or below a data point, provided that it is fair and reasonable. There should be a close relationship between the underlying data and the assessment of risks reflected in 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. In addition, aggregate tables may represent an industry average which does not fully reflect variations in an individual insurer’s own data.

**4.46** 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>.

**4.47** Data relating to the “assessment of risk” should focus on the assessment of claims costs, based on claims frequencies and claims severities, including the future cost of current claims. It should be gross of reinsurance and net of any excess paid by policyholders. Loadings flowing from expenses, capital and solvency requirements, tax and tax allowances, or acquisition costs are not held to be relevant to the assessment of risk based on actuarial and statistical data relating to differences between men and women.

**4.48** The expected future cost of current claims should be included in the published data. However, assumptions or forecasts about the path of trends that may affect future claims costs do not constitute factual or empirical data and should not be included.

**4.49** 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. It is expected that product innovation may make use of relevant non-UK evidence from a source on which it is reasonable to rely.

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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

## Application

**4.50** The guidance applies to insurance companies, reinsurance companies, Lloyds agents and Lloyds firms operating in the UK. It includes EEA-authorised firms who have exercised their right to passport into the UK.

**4.51** 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, where such a review or a variation of the terms constitutes entry into a new contract which takes effect after 21 December 2007, this should be undertaken in conformity with the Regulations.

**4.52** 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; and
- Private medical insurance.

## General

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

HM Treasury  
The Correspondence & Enquiry Unit  
Floor 2/W1  
1 Horse Guards Road  
London  
SW1A 2HQ

Tel 020 7270 4558

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# REGULATORY IMPACT ASSESSMENT

In a consultation document published in June 2007<sup>1</sup>, the Government set out proposals for implementing a requirement under the Gender Directive<sup>2</sup> ('the Directive') relating to insurance. The proposal set out the conditions under which insurance companies must publish data relevant to the use of sex as a factor in the assessment of risk. This Regulatory Impact Assessment (RIA) deals with the revised proposals, which take into account responses to that consultation.

## 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

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### Purpose and intended effect

The Government will implement the insurance data publication provisions set out in Article 5 of the Directive. Member States were given until 21 December 2007 to transpose these provisions into national laws. The Government intends to implement them in the most cost effective and proportionate way.

The insurance data publication provisions are intended to support the principle of equality between men and women by demonstrating that gender-based differences in premiums and benefits are justified by evidence, and that they are in principle fair and reasonable. The

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<sup>1</sup> The publication of data associated with the use of gender in the assessment of insurance risks. HM Treasury. June 2007

<sup>2</sup> Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services.

Government's objective is to ensure that UK consumers can see a quantified summary of the direct gender-based differences in risk for each relevant policy type in a readily intelligible form.

The implementing regulations, known as the Sex Discrimination Act 1975 (Amendment) Regulations 2007, are expected to enter into force on 21 December 2007.

The Directive and Regulations apply to insurance where the use of gender is a factor in the assessment of risk. They do not apply in the employment field. They apply only to insurance and pensions that are private, voluntary and separate from the employment relationship.

### Why is intervention necessary?

The 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.

The Sex Discrimination Act 1975 (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

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 gender-based differential in insurance premiums and benefits. Insurers who do not comply will not be able to treat men and women differently.

There are three broad options for how the requirement might be met:

- i) insurers might be able to rely on existing publicly available data sources - a do-nothing option;
- ii) a statutory regime to enforce mandatory record keeping and reporting of data to a supervisory body, charged with inspection, compliance, publication and revenue raising functions;
- iii) a statutory obligation on insurers to publish data in accordance with Government guidelines.

### Consultation

The Government published a partial regulatory impact assessment outlining these options and consulted on its preferred option (iii).

Sixteen responses were received, mainly from insurers and insurance industry representatives. There were two submissions from consumer groups and one private submission.

Nobody expressed support for the do-nothing option (rely on existing published data), which the Government had suggested would not fully meet the Directive requirement. The public data is incomplete and inaccessible. Insurers rely on their own data 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 and relate to observed differences in premiums and benefits.

The majority of respondents favoured the lighter touch option under which insurers would be responsible for published their own data, either collectively or individually. However, two consumer groups favoured option (ii). They said that, without full disclosure of information in a non-edited form through an independent body, consumers would not be able to determine the basis on which premiums are calculated, and the implementation of the Directive would lack the specificity, precision and clarity needed to achieve legal certainty. One group called for an extension of the reporting obligation to age as well as gender.

### Options for implementing the Directive

#### Option (i): 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 (ii): 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, which require insurers to demonstrate that their information justifies proportionate differences in individuals premiums and benefits

based on gender. It calls for large volumes 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 product innovation and 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 (iii): 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. This would seek to condense all the relevant data in a single measure of relative male to female risk so that the information can be presented in a form that is readily understandable to the man or woman in the street. To balance consistency of reporting with the flexibility to accommodate market developments and widely differing requirements for different sectors, the Government would issue guidance setting out the scope, form, content, timing and manner of data publication. This would enable insurers to demonstrate publicly that they were 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 would 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 (ii). 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 would choose to enter into collective publication arrangements through the Association of British Insurers (ABI), the Continuous Mortality Investigation Bureau (CMIB) established by the Faculty and Institute of Actuaries, 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. The CMIB already publishes data on behalf of the life industry.

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).

#### Equity and fairness

Implementing the data publication requirement will benefit consumers by supporting the principle of equality between men and women.. It will demonstrate that gender-based differences in premiums and benefits are justified by evidence, and that they are in principle fair and reasonable. The Government's objective is to ensure that consumers can see a quantified summary of the direct gender-based differences in risk for each relevant policy type in a readily intelligible form.

Compliance by insurers will have some start-up costs and ongoing costs in the long-term. These are likely to be passed on to policyholders. However, enabling firms to enter into collective reporting schemes will reduce the cost impact, and common reporting standards should lead to standardisation and increased consumer confidence

#### Small firms impact test

The Government has asked for evidence of the costs of implementation. The insurance industry has accepted that the estimated costings published with the partial regulatory assessment are reasonably accurate. They are unlikely to impose significant additional costs on small or medium sized firms.

## Competition assessment

The Government recognised from the outset that, if not handled carefully, there was a potentially serious impact on competition in mandating the release of firms' valuable and commercially sensitive proprietary data. Option (ii) in particular would be likely to risk potential breaches of the Competition Act 1988 by enabling insurers to have access to each others detailed risk information.

The Treasury has consulted the Office of Fair Trading and in developing its proposals has sought to find a way to:

- i) comply fully with the Directive in order to provide a means by which consumers can see accurate, up to date evidence that justifies continuing differences in insurance premiums or benefits between men and women; and
- ii) preclude the release of commercially sensitive information that would have the effect of reducing competition in the insurance market or facilitating concerted practices by insurers to the detriment of consumers.

This cannot be achieved through option (ii). It can be achieved through option (iii) by providing that insurers publish mainly historic data at a high level of aggregation. The resulting tables illustrate the results of differing claims costs and frequencies between men and women without disclosing price sensitive information. The Treasury would further need to provide that the collection of data for publication through collective publication schemes was subject to safeguards that would prevent unauthorised access or concerted practices. It proposes to do so through its guidance, which would have statutory force.

## Enforcement

It will be a condition of insurers' ability to use gender as a factor in risk assessment that they publish relevant data in accordance with Treasury guidance. Insurers who do not comply will not be able to use gender as a factor in risk assessment. They will be subject to challenge through the courts.

## Recommendation

The idea of requiring insurers to publish evidence to justify continuing to treat men and women differently gained widespread support during the passage of the Directive. It was a quid pro quo of securing a derogation from the principle of unisex pricing.

The do-nothing option does not meet Directive requirements. It would expose the UK to the risk of infraction proceedings. Option (ii) – a public body to collect and publish full unedited risk data - is favoured by consumer groups. It risks over-implementation and a serious impact on competition in the insurance market to the detriment of consumers. Option (iii) – insurers to publish data in accordance with Treasury guidance - is a more effective and proportionate implementation route, providing benefits to both consumers and businesses.

The Government has therefore decided to implement Option (iii).

#### Declaration

I have read the Regulatory Impact Assessment and am satisfied that the benefits justify the costs.

Signed

A handwritten signature in black ink that reads "Kitty Usher". The signature is written in a cursive style with a large initial 'K'.

Date: November 2007

Kitty Usher MP  
Economic Secretary to the Treasury

# List of respondents

The Government is very grateful to the following organisations and individuals for their responses to the consultation on the publication of data associated with the use of gender in the assessment of insurance risks.

Aegon  
Age Concern  
Association of British Insurers  
The Actuarial Profession (Institute of Actuaries and Faculty of Actuaries)  
British Insurance Brokers Association  
Equal Opportunities Commission  
Financial Services Authority  
Investment and Life Assurance Group  
Norwich Union  
Prudential Plc  
Royal & Sun Alliance Insurance Plc  
RBS Insurance  
Standard Life Plc  
Unum Ltd  
Ms. Sarah Wood  
Zurich financial Services Ltd







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