

Guidance on the publication of data associated with the use of gender in the assessment of insurance risks

March 2008



HM TREASURY



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INTRODUCTION

1.1 This guidance is issued by HM Treasury in accordance with section 45(3)(a) of the Sex Discrimination Act 1975 and Article 46(3) of the Sex Discrimination (Northern Ireland) Order 1976 (as amended by the Sex Discrimination (Amendment of Legislation) Regulations 2008).

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

1.3 Section 45(3)(a) of the 1975 Act (and Article 46(3) of the 1976 Order) permits discrimination in insurance between men and women in relation to premiums or benefits, under contracts entered into after 5 April 2008, subject to the conditions set out in the legislation. One condition 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 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

1.4 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.

2

DATA PUBLICATION OBLIGATIONS

2.1 Chapter three 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 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.

2.2 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.

2.3 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 purposes for which it has been collected. In particular, there must be no access to or sharing by insurers or their agents of any data that they have contributed.

2.4 An insurer that does not publish its own data, or participate in a collective publication scheme may nonetheless base its gender-based risk assessment on the data published by other insurers and offer gender-based premiums or benefits in accordance with the legislation. An insurer that does not publish its own data, or participate in a collective publication scheme or rely on the data published by other insurers will not be able to discriminate on grounds of gender.

2.5 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.

2.6 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 Chapter three of this guidance must be provided free of charge.

Applicable dates

2.7 For products already available in the market on or before 5 April 2008, the data used as the basis for assessing risks or pricing contracts entered into after 5 April 2008 must be published by 30 June 2008.

2.8 Certain long term contracts provide that their terms and conditions may be reset 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 5 April 2008, it should be undertaken in conformity with the legislation and guidance that is in place on the day that a new contract is made.

2.9 For new products introduced into the market after 5 April 2008, 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 include non-UK data and data that may be available on a regional or other basis to support the introduction of new products into the UK market.

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

3

COMPILING PUBLISHING AND UPDATING DATA

3.1 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 **3.2** 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.

3.3 The published data may aggregate different forms of annuity and life assurances. It should be reviewed and, if necessary, updated at intervals not exceeding four years.

Critical illness insurance **3.4** 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 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 ten years for ages up to 30, five years up to age 80 and a single age range thereafter.

3.5 The published data may aggregate different forms of critical illness insurance. It should be reviewed and, if necessary, updated at intervals not exceeding four years.

Income protection insurance (permanent health insurance) **3.6** Publication may be by way of a table or chart illustrating the ratio of male to female sickness, disability and unemployment for insured risks in the United Kingdom or an appropriate region. The published data must illustrate recent differences in the incidence and cost of claims 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 80 and a single age range thereafter.

3.7 The published data may aggregate different forms of income protection insurance. It should be reviewed and, if necessary, updated at intervals not exceeding four years.

Motor insurance **3.8** 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.

3.9 Data may aggregate all forms of cover and for all relevant motor vehicles. It should indicate the accident years reported. It should be reviewed and, if necessary, updated at intervals not exceeding three years.

Private medical insurance **3.10** 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.

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

Other types of policy and new policies **3.12** 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.

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

Updating this guidance

3.14 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.

4

BACKGROUND

4.1 The Sex Discrimination (Amendment of Legislation) Regulations 2008 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.

4.2 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.

4.3 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 5 April 2008. 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.

4.4 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)

4.5 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.

4.6 For England, Wales and Scotland, 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.

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

4.8 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).

4.9 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 5th April 2008 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 subparagraph (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 subparagraph (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.

4.10 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.

4.11 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.

4.12 In relation to Northern Ireland, corresponding amendments are made to the relevant provisions of the Sex Discrimination (Northern Ireland) Order 1976.

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;
- insurance providers can continue to use commercially meaningful proprietary data; and
- 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. 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.

4.15 Gender is therefore one of a number of factors which are taken into account. The Regulations amending the Sex Discrimination Act 1975 (and the 1976 Northern Ireland Order) 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.

4.16 Section 45(3) of the SDA (and article 46(3) of the 1976 Order) 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.

4.17 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 law¹.

4.18 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.

4.19 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.

¹ 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.

4.20 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.

Application

4.21 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.

4.22 The guidance applies to contracts entered into after 5 April 2008. 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 5 April 2008, this should be undertaken in conformity with the Regulations.

4.23 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

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