



Office of the
**First Minister and
Deputy First Minister**

www.ofmdfmi.gov.uk

The Sex Discrimination Order 1976 (Amendment) Regulations (NI) 2012

SR No 462

**To implement an ECJ ruling that
insurance benefits and premiums should
be gender-neutral**

Final Regulatory Impact Assessment

December 2012

FINAL REGULATORY IMPACT ASSESSMENT

EUROPEAN COURT OF JUSTICE RULING ON THE USE OF GENDER IN INSURANCE POLICIES

1. Title of Proposal

- 1.1 The Sex Discrimination Order 1976 (Amendment) Regulations (Northern Ireland) 2012 (SR No. 462).

2. Purpose and Intended Effect of Measure

(i) Objective

- 2.1 The Office of the First Minister and deputy First Minister is proposing to amend the Sex Discrimination (Northern Ireland) Order 1976 to remove the exception allowing gender differentiation by providers of insurance and related financial services in the prices and benefits offered to consumers. The amendment is necessary to comply with the European Court of Justice (ECJ) judgement on Directive 2004/113/EC in Case 236/09 (Test Achats) of 1 March 2011. The ECJ ruled that in the insurance services industry, the derogation from the general rule of unisex premiums and benefits is invalid with effect from 21 December 2012.

(ii) Background

- 2.2 The Gender Directive (2004/113/EC) implements the principle of equal treatment between men and women in the provision of goods and services. Article 5(1) provides that the use of sex as an actuarial factor in insurance and related financial services should not result in differences between individuals' premiums and benefits (referred to as "gender-neutral pricing"). However, Article 5(2) permits Member States to derogate from gender-neutral pricing in limited circumstances, so that use of gender as an actuarial factor is permitted to deliver differences in premiums between men and women (a practice referred to as "gender sensitive pricing"). On 21 December 2012, five years after the transposition of the Gender Directive into national law, Member States must re-examine the justification for these exemptions.
- 2.3 The Test-Achats case (Case 236/09) sought the ECJ's judgment on whether Article 5(2) was compatible with the principle of equal treatment in EU law. The Advocate General of the ECJ disagreed, concluding that gender sensitive pricing was incompatible with the fundamental principle of equal treatment in EU law.
- 2.4 The ECJ gave judgment on 1 March, to the effect that Article 5(2) of the Gender Directive is invalid with effect from 21 December 2012. In delivering its judgment, the Court emphasised the principle of equal treatment between men and women in access to the supply of goods and services. The Court took the view that this principle applied equally to both men and women

because – according to the Gender Directive - they are comparable, and an unlimited derogation was incompatible with the principle of equal treatment in EU law.

(iii) Risk assessment

2.5 Article 46 of the Sex Discrimination (Northern Ireland) Order 1976 allows insurers to calculate different premiums and benefits for men and women on the basis of up to date reliable, actuarial or other data. This exception applies in relation to an annuity, life assurance or accident assurance policies or similar matters involving the assessment of risk. This provision takes advantage of the conditional derogation permitted by Article 5(2) of the Gender Directive thus enabling gender sensitive pricing to be used in insurance and annuities - resulting in, for example, cheaper car insurance for women.

2.6 The ECJ ruled that gender sensitive pricing by insurers is contrary to the principle of equal treatment in EU law (as expressed in the Gender Directive). There is a risk that EU law may permit the derogation to continue indefinitely and that gender-neutral pricing is required in order to uphold its principle of equal treatment for all. This ruling will have unintended and unpredictable consequences beyond simply achieving gender-neutral pricing. The ruling is also expected to lead to two main outcomes, all of which will impact on consumers:

- Firstly, it will result in cross-subsidisation of premiums between the genders. So, if a (generally more careful) female driver has to pay the same price for motor insurance as a (generally less careful) male driver, then she will be subsidising the cost of his insurance;
- Secondly, adverse selection will operate to increase the cost of insurance generally and incentivise riskier behaviour. So, if gender neutral pricing is introduced into life assurance, men (who have on average a lower life expectancy) will find life insurance to be good value and will be incentivised to buy it or buy more. On the other hand, women (who have on average a higher life expectancy) will find life insurance poor value and will be disincentivised from purchasing such insurance. As fewer low risk people (i.e. women) take out life assurance, then the insurer's portfolio becomes increasingly risky, and the cost of insurance has to rise to compensate.

3. Options

Option 1 – Do nothing

3.1 Due to the nature of the legally binding ECJ ruling, this is not an option. If a Member State fails to transpose a Directive properly, or is not enforcing legislation correctly, then the European Commission will begin legal (infraction) proceedings to rectify the situation. Failure to properly transpose and enforce an EU obligation can eventually lead to a fine. Northern Ireland

could be required to pay a percentage of any UK fine, or indeed all, if the infraction relates to a devolved matter. Failure to act will result in time and money being wastefully expended.

Option 2 – Amend domestic legislation to implement ECJ ruling

- 3.2 The ECJ has ruled on the validity of EU legislation and therefore Member States are bound to implement the ruling. As there is no right of appeal the only option available is to implement the ruling and to amend domestic legislation accordingly. There is no alternative option to be considered.
- 3.3 The derogation permitted by Article 5(2) of the Gender Directive cannot apply to any new contracts for insurance entered into on, or after, 21 December 2012. In line with the Westminster Government's interpretation of the ruling, the Executive's view is that any contracts with gender-sensitive pricing premium or benefits concluded before 21 December 2012 can continue unchanged after that date.

4. Costs and Benefits

- 4.1 This impact assessment considers the costs and benefits of implementing the judgment, compared to a do-nothing baseline. The judgment requires the pricing of individuals' insurance policies to be costed in a gender-neutral manner. The arguments below are based on the premise that the judgment affects all new contracts entered into on or after 21 December 2012.
- 4.2 The judgement will affect different business lines to varying degrees. However, data regarding the effect on the different business lines is scarce - many of the factors are either incalculable or based on market-sensitive information that could not be acquired for the purposes of this impact assessment. Therefore, although consumer impacts are considered to be adverse, quantitative calculations are based on very limited sources of data.
- 4.3 Much of the data used in this impact assessment is taken from Association of British Insurers (ABI) Research Paper No. 24 - "*The use of gender in insurance pricing*" which analyses the impact of a potential ban on the use of gender as a rating factor. This report draws on information obtained from UK insurers and many of its broad findings about the impact of introducing a gender-neutral pricing policy are equally applicable locally.
- 4.4 The Consumer Council conducted a separate review of the insurance market here. The resulting research report "*Quote....Unquote - The cost of insurance in Northern Ireland*" (published in 2009) highlighted the fact that compared to consumers living in GB, consumers here pay more for insurance, in particular consumers who live in low income and rural areas. In addition, an Office of Fair Trading Report (December 2011) found motor insurance premiums in Northern Ireland to be approximately 11% higher than in Great Britain. The OFT Report states that the cost disparity is particularly marked in rural areas, with quotes here between 30% and 80% higher than quotes in similar areas in Great Britain.

- 4.5 As a follow on from the OFT Report, the Environment Minister has commissioned a joint Department of the Environment / Association of British Insurers study to compare rural and urban motor insurance costs between England and Northern Ireland. The timescale for the receipt of the first main findings from this study is early 2013.

Business sectors affected

- 4.6 The business sector most affected by the proposed change is the insurance industry. While there are numerous local insurance brokers offering insurance products, the actual insurance providers (i.e. the insurance underwriters) are GB based and operate on a UK wide basis.
- 4.7 While insurance brokers will need to be aware of the legislative change to implement the ECJ ruling, there will be no direct costs to them, other than to make staff aware that gender will no longer result in individual differences in premiums and benefits for men and women.

The effects of adverse selection and competition

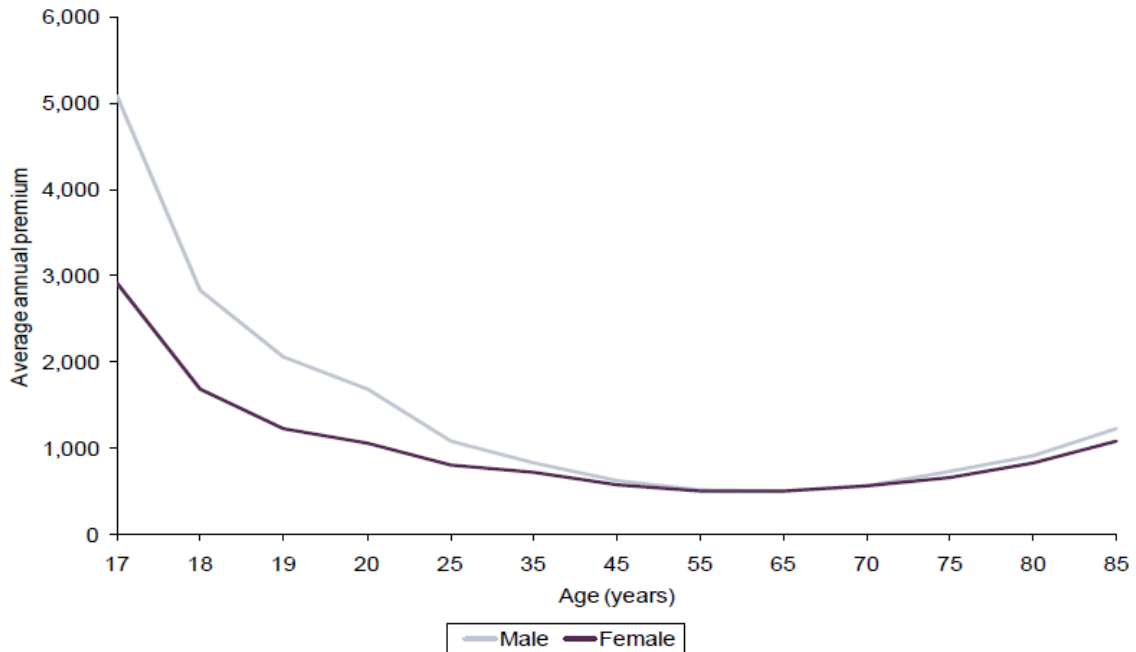
- 4.8 The price of insurance policies is determined by both competition and the information that insurers can gather on the risk that they are covering. These factors help to determine the premium that must be set for different risk categories, in order to fully allow for the likelihood of a claim and the cost of those claims. The more information that an insurer can gather the more accurately any policy can be priced.
- 4.9 Gender is one of the most important risk indicators that an insurer can use to price a number of business lines. However, if insurers were unable to take gender into account when assessing premiums and benefits they are likely to have to average prices between high and low-risk individuals in those lines where gender is a risk factor. In such a scenario, a policy at an average price would be more attractive to higher risk individuals, as the policy would not be priced according to their risk. Conversely, lower risk individuals would find the product unattractive, as they would effectively be overcharged when compared to their fully risk-priced premium. This is likely to result in adverse selection, whereby the overall risk profile of an insurer's book becomes more risky as the 'adverse' high-risk individuals are incentivised to buy cover and low-risk individuals depart the market.
- 4.10 To avoid excessive exposure to 'adverse' risks, insurers may price policies assuming worst case risk characteristics for those factors where they are not allowed to distinguish, and hence assume most customers are male or female according to whichever group is riskier. This would drive up the average price of a gender-neutral policy, meaning that following the initial market adjustment it would be higher than the original risk-based price, as the overall increases in premium cost are likely to be greater than any reductions. Thus adverse selection is likely to make overall pools more risky than they were previously.

Motor insurance

- 4.11 Motorists are legally obliged to be insured against the costs arising from their liability in the event of injuring others or damaging other people's property resulting from use of a vehicle. In practice, this means that it is compulsory for motorists to have, as a minimum, third-party liability insurance. Beyond this, motorists can choose higher levels of cover. Motor insurance is the area in which there is the most obvious difference between premiums for males and females. This is also the business line in which there is the starkest difference in the risks posed between the genders.
- 4.12 According to the report "*Quote...Unquote*"¹ the number of insurers who operate here is very low. The report states that the maximum number of insurers offering motor insurance quotations in Northern Ireland was 15, in contrast to 51 insurers in other parts of the UK. The report states that some consumers here had a choice of as few as nine providers whereas the lowest number of providers in other parts of the UK was 28. The report also highlighted that ABI was unable to provide figures showing the number of insurance companies operating in Northern Ireland and their share of the market
- 4.13 *Figure 1* below indicates the difference in motor insurance premiums charged to individuals according to age and gender. There is a clear disparity between males and females of the same age, particularly for the youngest drivers.

¹ Consumer Council for Northern Ireland – "Quote... Unquote - The Cost of Insurance in Northern Ireland" March 2009

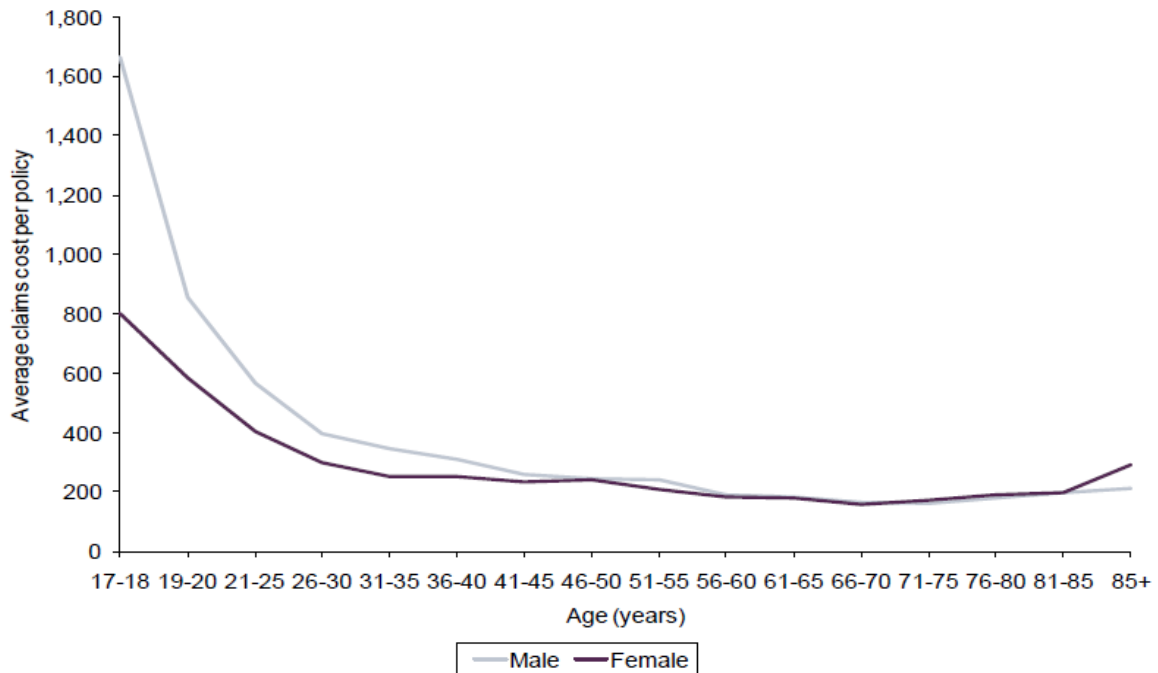
Figure 1: Graph illustrating average annual premium for comprehensive motor insurance according to age and gender



Source: ABI Research Paper No 24, 2010 - The use of gender in insurance pricing

- 4.14 The reason for the disparity between the premiums charged is because the statistics clearly indicate that males, and younger males in particular, are far more likely to be involved in an accident and suffer death or serious injury whilst driving than females. This means that insurers will pay out more in claims costs for male drivers as opposed to females. The differing cost of claims is reflected in the respective premiums charged for motor insurance.
- 4.15 *Figure 2* shows a strong correlation between claims cost and premium charged. The ECJ ruling will require insurers, in considering the data indicating the different risks posed by the genders, and the claims costs incurred, to price in a neutral fashion. As a result young female drivers, who currently receive a lower quote, are likely to pay significantly more than at present for their motor insurance in order to subsidise the risk posed by young males, who will pay less.

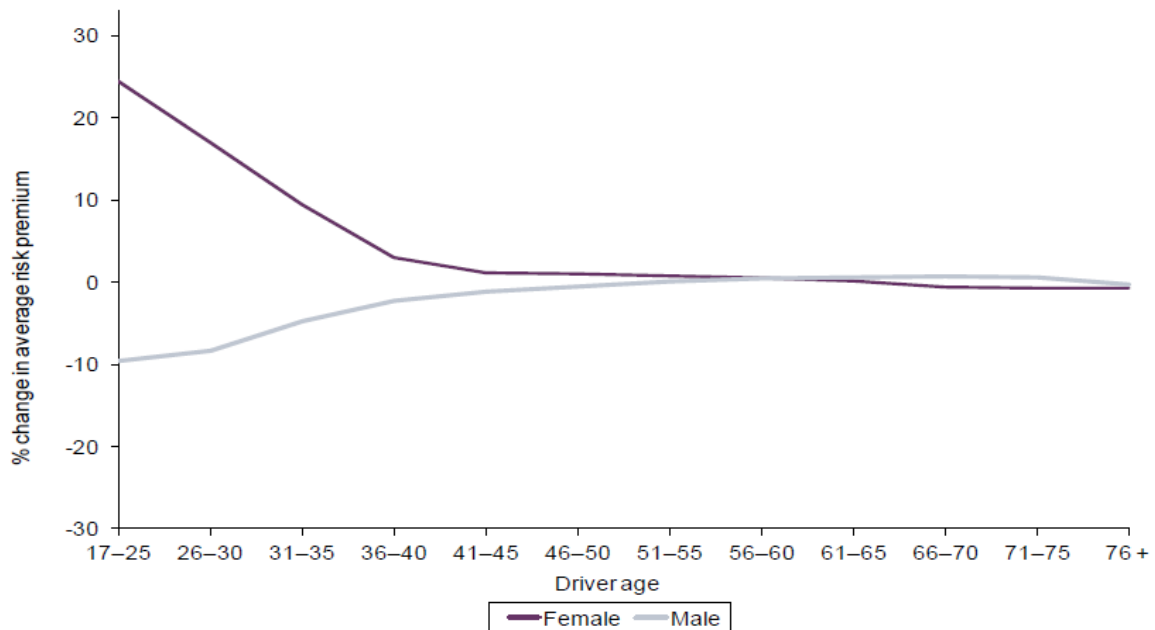
Figure 2: Graph illustrating average claims cost per policy for motor insurance according to age and gender



Source: ABI Research Paper No 24, 2010 – The use of gender in insurance pricing

4.16 *Figure 3* indicates the differing amounts by which premiums could change for males and females, if gender was no longer used as a risk factor in the pricing of insurance policies. The decrease in premiums for younger male drivers may be limited if the move to gender-neutral pricing is set against a backdrop of motor insurance having been significantly loss-making for insurers in recent times.

Figure 3: Graph illustrating the percentage change in average premium for motor insurance according to age and gender, following the removal of gender as a risk factor in the pricing of individual policies



Source: ABI Research Paper No 24, 2010 – The use of gender in insurance pricing

Adverse selection

- 4.17 It should be noted that the adverse selection issues highlighted at paragraphs 4.8 to 4.10 are likely to have a more limited impact on motor insurance. The mandatory nature of this type of insurance means that, although more risky drivers could enter the market, the option to exit the market for those suffering significant price increases is reduced. Some policyholders may find that their motor insurance becomes unaffordable, and they may give up the use of their vehicle and therefore their insurance. However, this is not likely to be significant, as the elasticity of demand for motor insurance has remained relatively stable despite price increases.
- 4.18 The decreased likelihood of females exiting the market, coupled with the negligible decrease in premiums for males, means that the risk profile for motor insurance providers is likely to be unchanged. It is assumed therefore that adverse selection will have little to no impact for the purposes of motor insurance. Again, this may not be reflected in prices, as insurers will be increasing their prices to compensate for other factors that have led to them suffering a high loss ratio on motor insurance. The reasons for those price increases are beyond the scope of this impact assessment.

Quantitative calculations

- 4.19 As mentioned previously, firm data for the effects of the ruling on the market is difficult to obtain as it either is not calculable or is market-sensitive. As a

result, assumptions must be made to quantify the effect of removing gender as a risk factor in the pricing of individual policies in motor insurance.

- 4.20 To help estimate the negative impacts of this decision across the domestic insurance market locally, *Table 1 and Table 2* below demonstrate the net cost of the ban on the use of gender in motor insurance, for males and females respectively. The net cost overall stands at approximately £13m.

Table 1: Impact on the ban on the use of gender for male motor insurance policyholders

Males

Age Band	Average Premium (£)	Average % Change	Change in Premium (£)	No of policyholders	Total benefit of banning use (£)
17-25	2090	-9	188	67,575	12,704,100
26-30	1000	-8	80	46,760	3,740,800
31-35	1000	-5	50	50,311	2,515,550
36-40	900	-3	27	51,915	1,401,705
41-45	700	-2	14	57,017	798,238
Total					21,160,393

Table 2: Impact on the ban on the use of gender for female motor insurance policyholder

Females

Age Band	Average Premium (£)	Average % Change	Change in Premium (£)	No of policyholders	Total cost of banning use (£)
17-25	1360	+24	326	63,262	20,623,738
26-30	900	+18	162	45,571	7,382,502
31-35	900	+10	90	48,410	4,356,900
36-40	700	+3	21	47,970	1,007,370
41-45	700	+1	7	52,775	369,425
Total					33,739,935

- 4.21 The Tables above use data from the Oxera Report (The Use of Gender in Insurance Pricing – ABI Research Paper No 24, 2010) in order to estimate the average premium currently paid by individuals in differing age bands. Those aged 45 and over have been excluded for these purposes, as data indicates that this group would be minimally affected by any ban on the use of gender in insurance underwriting. The percentage change in average premium has been calculated and represented in monetary terms. Driver & Vehicle Licensing Agency (NI) data has been used in order to estimate the number of motor insurance policyholders locally. It should be noted that an assumption has been made that all those with a full driving licence hold a motor insurance policy. The cumulative effects have been estimated by multiplying the change

in premium by the number of policy holders. For males, this represents a 'benefit' of approximately £21m due to the reduction in premiums. For females, this conversely represents a cost of approximately £34m, with a net cost to motorists of approximately £13m.

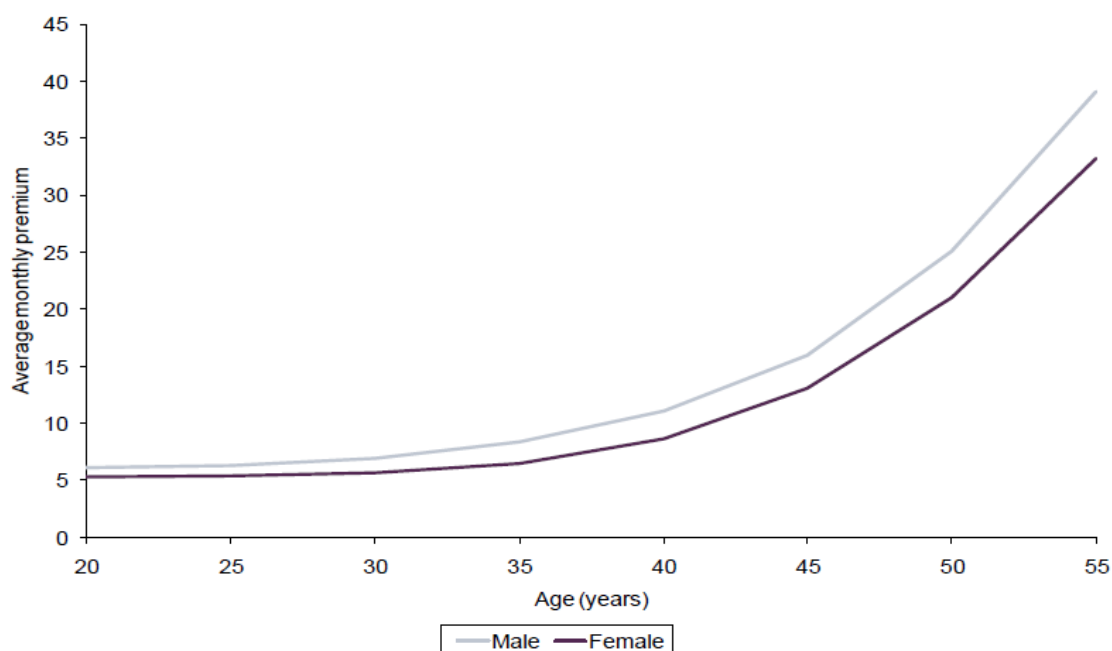
Protection market

4.22 In the insurance services sector, the protection market includes life and term-life insurance, income protection, and critical illness policies. For these lines of business, premiums tend to be lower for the 'healthier' of the two genders, with statistics indicating that this is often females. The imposition of gender neutrality will therefore affect premiums for females more than males in the protection market.

Term-life insurance

4.23 The differences between the premium incurred by males and females are somewhat less prominent than those shown for motor insurance. There is, however, a difference between the genders, as indicated by *Figure 4* below.

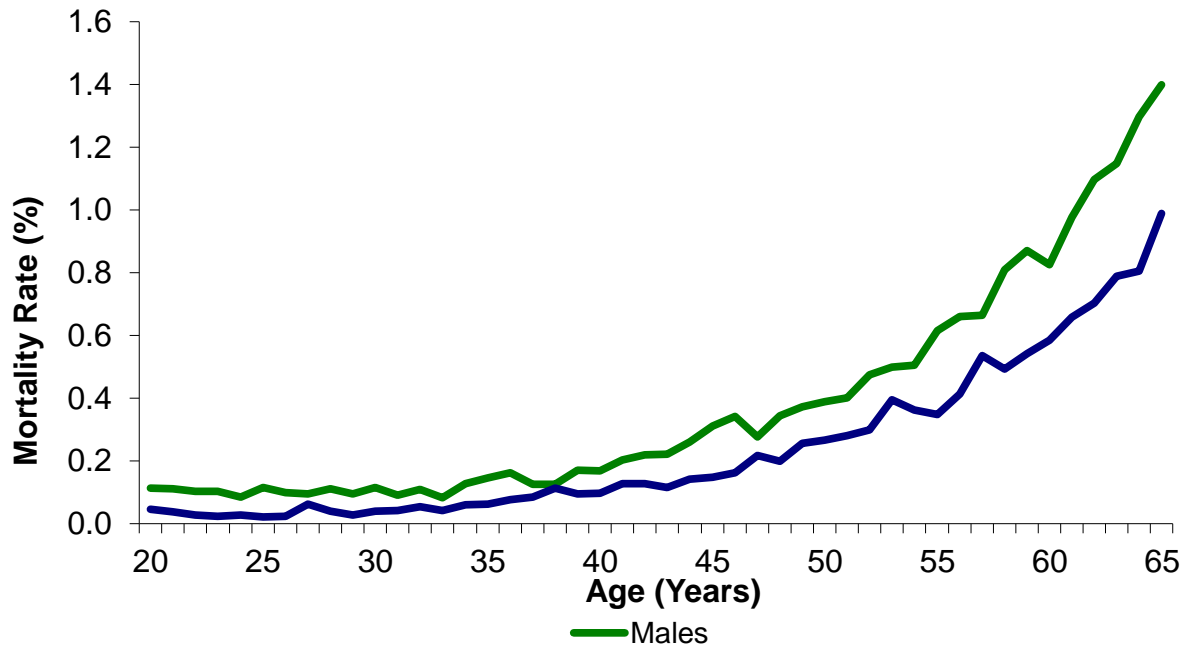
Figure 4: Graph illustrating the differences in average monthly premium for life insurance according to age and gender



Source: ABI Research Paper No 24, 2010 – The use of gender in insurance pricing

4.24 On average, females live longer than males by approximately 4 years. As a result, premiums differ between the genders because of the varying risks that they pose. Mortality rates for females, at any given age, are lower than those for males.

Figure 5 - Mortality Rate in Northern Ireland (%), 2008-2010



Source: Office for National Statistics - Interim Life Tables, Northern Ireland (based on data for the years 2008-2010)

- 4.25 The strong correlation between mortality rates and the premium charged to males and females has been reflected in the approach taken in a risk-based pricing model. The move to unisex pricing means that females will lose out on the reduced premium they currently enjoy as a result of the reduced mortality rate in their risk pool.

Quantitative calculations

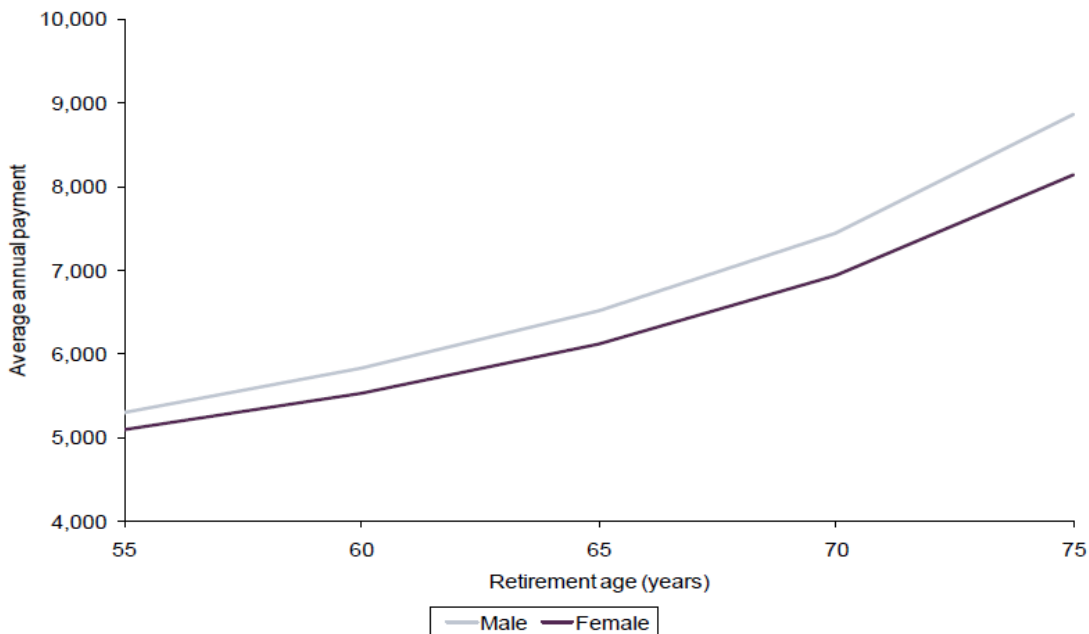
- 4.26 A typical monthly premium for a term-life policy has been estimated to be £172 for a female, and £22 for a male. If the corresponding premium following the removal of gender as a risk factor in the pricing of individual policies were £20.50, there would be a loss of £3.50 for every female term-life policyholder, and a gain of £1.50 for every new male term-life policyholder, all else being equal. The figure of £20.50 has been suggested, rather than the average of £19.50, as a result of more males purchasing term-life cover than females. A significant proportion of policies are sold on a joint life basis (covering a man and a woman) and these are likely to be largely unaffected.
- 4.27 In order to extrapolate this figure across the market, we would need to be able to determine the number and gender mix of term-life policyholders across the region and this data is not available. The potential changes in premium are modest (e.g. in relation to income) and hence it can reasonably be expected that the change will overall, have only have a minor impact on demand.

² Source Institute and Faculty of Actuaries Working Party. Based on a 50 year old, non-smoker, covering a sum of £150,000 for a term of 10 years

Annuities

4.28 In the insurance services sector, annuities pay out a yearly income on retirement, in return for investment in a 'pot' by an individual over the course of their working life. Annuities can also be index-linked to adjust for inflation. As mentioned previously, males tend to live shorter life-spans than females, and are consequently more risky in the protection market. For annuities, the result of males living shorter lives than females is that they receive a higher payout for the same 'pot' size, as that investment must last a shorter period of time compared to females. *Figure 6* shows males receive a higher average annual annuity payment as compared to females.

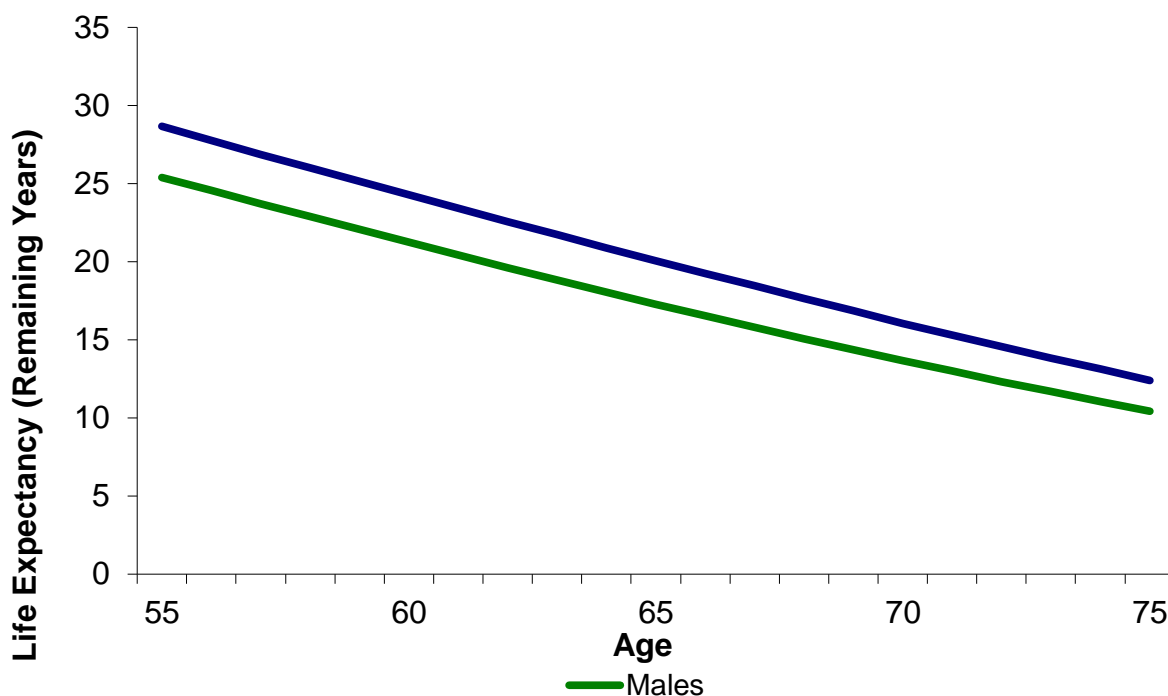
Figure 6: Graph illustrating the differences in average annual payment for a pension annuity according to age and gender



Source: ABI Research Paper No 24, 2010 – *The use of gender in insurance pricing*

4.29 The reasoning behind the higher average annuity return for a male as compared to a female, with all else being equal, results from the lower life expectancy in their risk pool. The same lump sum is expected to last a shorter period of time, therefore meaning they receive a higher annual rate of return.

Figure 7: Graph illustrating NI Life Expectancy (2008 – 2010) according to age and gender



Source: Office for National Statistics - Interim Life Tables, Northern Ireland (based on data for the years 2008-2010)

- 4.30 As gender-neutral pricing will have to be implemented, males will lose out on the benefit of being identified as belonging to a risk pool with a lower life expectancy. Males will therefore have to accept a lower payout from an annuity than they currently receive. This lower payout is likely to act as disincentive for men to invest in annuities instead of other retirement provision. Therefore, although women will enjoy an up-front uplift in rates, which might encourage greater female take-up of annuities, in the medium term, the adverse selection impacts are likely to bring down annuity rates for both sexes – potentially leading to a greater reliance on State provision (the impacts on the welfare system are beyond the scope of this impact assessment).

Quantitative calculations

- 4.31 A male annuitant may currently receive an average payout of £6,6423 per annum, whereas a female annuitant may currently receive £6,2434 per annum. If the corresponding payout following the removal of gender as a risk factor in the pricing of individual policies was £6,574 there would be a loss of £68 per annum for a male annuitant and a gain of £331 per annum for the

³ Source Institute and Faculty of Actuaries Working Party. Based on a 65 year old, purchase price £100,000.

⁴ Source Institute and Faculty of Actuaries Working Party. Based on a 65 year old, purchase price £100,000.

female annuitant. However, the figure for the post-change annuity reflects the current mix of annuities between males and females at age 65, whereas there is a clear potential for the change to affect the decision of males as to whether or not to purchase an annuity. If the proportion of males reduces, then the post-change annuity will settle nearer to the current female annuity.

- 4.32 In order to extrapolate this figure across the market, we would need to be able to determine the number and gender mix of annuitants locally. Again, however, the effect of the change is likely to be dampened by the popularity of joint life annuities, which are often chosen to pay a lower income to the spouse after the death of the pensioner (the figures above relate to single life annuities).

5. Small Business Impact Test

- 5.1 The proposed amendment to the Sex Discrimination (Northern Ireland) Order 1976 applies only to the insurance services industry and will have no significant cost impact on small businesses here. While there are numerous local insurance brokers offering various insurance products, the actual insurance providers themselves are invariably larger GB based businesses operating on a UK wide basis.
- 5.2 The main impact on relevant small businesses (i.e. insurance brokers) will be the need to make staff aware that gender will no longer result in individual differences in premiums and benefits for men and women. The cost of such familiarisation will be negligible. There may also be a need to make some marketing or sales changes in relation to the promotion of insurance products. The quantitative impact of such changes is very difficult to calculate.

6. Other Impact Assessments

- 6.1 An equality screening has been carried out for the purposes of compliance with Section 75 of the Northern Ireland Act 1998. Under Section 75, the Department is required to have due regard to the need to promote equality of opportunity:
- between persons of different religious belief, political opinion, racial group, age, marital status or sexual orientation;
 - between men and women generally;
 - between persons with a disability and persons without; and
 - between persons with dependants and persons without.
- 6.2 The ECJ has ruled that in the insurance services sector, the derogation from the general rule of unisex premiums and benefits is contrary to the principle of equal treatment in EU law. As a consequence, the proposed amendment to the Sex Discrimination (Northern Ireland) Order 1976 will remove the conditional derogation regarding the use of gender in the calculation of insurance premiums on contracts entered into with effect from 21 December 2012. However, it is believed that the amendment will have some unintended and unpredictable consequences beyond simply achieving gender-neutral

pricing - for example young female drivers may see their insurance premiums increase by up to 25% per year while young male drivers may see a 10% reduction in the cost of their policies. However, legally there is no option other than to implement the ECJ judgement.

7. Enforcement and Sanctions

- 7.1 The primary means of enforcing sex discrimination legislation is through complaints brought by an individual. Complaints in relation to discrimination in the field of goods facilities and services are brought to the county court and the remedies which are available to the individual are the same as those which would have been available had proceedings been brought in the High Court (Article 66(2) of the Sex Discrimination (NI) Order 1976).
- 7.2 The Equality Commission also has powers to conduct inquiries and investigations, e.g. into discrimination in a specific sector, or where it believes that an organisation is contravening sex discrimination law.

8. Monitoring and Review

- 8.1 The Equality Commission has a formal duty to keep under review the workings of the Sex Discrimination (Northern Ireland) Order 1976. In addition, the Sex Discrimination Order 1976 (Amendment) Regulations (NI) 2012 contains a provision requiring OFMDFM to review the operation of the Regulations and to publish a report within five years of the Regulations coming into operation.

9. Consultation

- 9.1 On 29 October 2012, the Office of the First Minister and Deputy First Minister launched a public consultation on the draft legislation to amend the Sex Discrimination (Northern Ireland) Order 1976 to implement the ECJ ruling that insurance benefits and premiums should be gender neutral from 21 December 2012. A total of 13 consultation responses were received, three of which offered not comment at all.
- 9.2 As the ECJ judgement is legally binding on Member States, there is no option other than to comply with it. The majority of the responses received focussed on the potentially adverse impact the judgment may have on consumers, particularly on women and the higher cost of motor insurance premiums.
- 9.3 As already mentioned, data on the effect of the proposed legislative change is scarce. Many factors are either incalculable or based on market-sensitive information that could not be acquired for the purposes of this impact assessment.

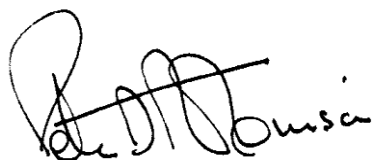
10. Summary and Recommendation

- 10.1 The ECJ has ruled that gender sensitive pricing by insurers is contrary to the principle of equal treatment in EU law. As a consequence, an amendment to domestic legislation is required to implement this ruling.
- 10.2 Under the proposed legislative change, both females and males will be treated equally and in accordance with the ECJ ruling. However, the amendment will have some unintended and unpredictable consequences beyond simply achieving gender-neutral pricing. In very broad terms, the impact on consumers is expected to be adverse. For example, it is anticipated that females will pay more for their life insurance policies; young females will pay considerably more for motor insurance; and males will receive lower yearly incomes from annuities.
- 10.3 As the ECJ ruling is legally binding, there is no option other than to implement the judgement. The requirement to introduce gender-neutral pricing will apply to all new contracts completed and entered into on, or after, 21 December 2012.

11. Declaration

“We have read the Regulatory Impact Assessment and are satisfied that the benefits justify the costs.”

Signed:



**Rt. Hon. Peter Robinson MLA
First Minister**



**Martin McGuinness MP MLA
deputy First Minister**

Date:

21 December 2012

Contact official:

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**First Minister and
Deputy First Minister**

www.ofmdfmi.gov.uk

**European Court of Justice ruling
that insurance benefits and
premiums should be gender-
neutral**

Consultation summary report

December 2012

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Chapter 1 – Introduction

Purpose of this document

- 1.1 OFMDFM launched a consultation on 29 October 2012 on the Executive's proposed implementation of the European Court of Justice (ECJ) judgement on gender neutrality in the pricing of insurance premiums and benefits. The consultation period closed on 5 December 2012. This document summarises the responses received to that consultation.

Background

- 1.2 On 1 March 2011, the ECJ ruled that the use of gender as a risk factor by insurers should not result in individual differences in premiums and benefits for men and women and that the derogation contained in Article 5(2) of the Gender Directive, which permitted this practice, should cease to have effect from 21 December 2012. In delivering its judgement, the ECJ emphasised the principle of equal treatment between men and women in the access to supply of goods and services. The ECJ took the view that this principle applies equally to both men and women because they are comparable, and should therefore be treated as such for the purposes of insurance.
- 1.3 The ECJ judgement is binding on the UK as a Member State of the European Union. As such, the Executive is legally required to implement the judgement. This will bring about gender-neutral pricing within the insurance industry thus promoting the principle of equal treatment between men and women.
- 1.4. The OFMDFM consultation document summarised the Executive's proposed response to the ECJ judgment and sought views on the draft Regulations through which it proposed to amend the Sex Discrimination (Northern Ireland) Order 1976 to comply with the judgment. It also sought comments on the Department's draft Regulatory and Equality Impact Assessments and asked for views on some of the key issues arising from the judgement.
- 1.5 The consultation document also referenced guidelines produced by the European Commission on the application of the Gender Directive, in light of the ECJ

decision. The Commission's guidelines responded to the need for practical guidance on the implications of the ECJ ruling.

Responses to the consultation

- 1.6 OFMDFM received a total of 13 responses to the consultation. Two of the responses came from UK-wide organisations representing the insurance industry. The remainder of the responses came from local stakeholders. A list of respondents can be found at the Annex to this report.
- 1.7 OFMDFM is grateful to all those who took the time to respond to this consultation.

Chapter 2 – Impact on consumers and industry

Consultation question 1

We would welcome views on whether the assumed impacts set out in the Regulatory Impact Assessment and the underlying assumptions are reasonable. We would welcome any data that would help us get a better understanding of whether the assumed market impact is correct.

- 2.1 The **Institute and Faculty of Actuaries** referred to its response to the HM Treasury consultation for a general discussion on the anticipated impact of the ECJ judgement. It said that its response to HM Treasury was equally valid to Northern Ireland as it was to the rest of the United Kingdom.
- 2.2 The **Institute and Faculty of Actuaries** pointed out that the term assurance and annuity markets are competitive in Northern Ireland. As a consequence, a range of prices would be expected to be available within the local insurance market, reflecting each insurer's approach to underwriting following implementation of the EU ruling. However, the **Institute** said that the Northern Ireland motor insurance market was not as competitive as the market in the rest of the UK. Fewer insurers participate in this market and it is therefore more difficult to anticipate the outcome of pricing decisions following implementation of the ruling.
- 2.3 The **Association of British Insurers (ABI)** highlighted the fact its members are adjusting their systems to make sure they are ready to offer a smooth transition to gender-neutral pricing and benefits that are as fair and accurate as possible in time for 21 December 2012. The **ABI** said that once insurers are no longer able to consider a customer's gender when calculating an insurance premium, it expected the cost of premiums for some products to be affected. The **ABI** pointed out that the motor insurance market is highly competitive and as a consequence insurers are unable to discuss the overall impact which the ECJ ruling will have on premiums. The real extent of the changes will only be clearer closer to, and after, 21 December 2012.
- 2.4 The **ABI** enclosed a copy of its response to the HM Treasury consultation which outlined further the Association's views on the potential impact of the ECJ ruling.

In its response, the **ABI** agreed with the overall assumptions in HM Treasury's impact assessment – which was that the judgement would increase costs for both consumers and for industry.

- 2.5 The **Consumer Council** believed the new EU ruling to be a double blow for motorists in Northern Ireland. It pointed out that car insurance here is already expensive. The **Council** believed the ruling would potentially make a bad situation worse. In light of the likely impact on consumers, the **Consumer Council** said it was imperative that the Assembly looked at the factors which are already inflating car insurance premiums across the UK, and in particular Northern Ireland. The **Consumer Council** believed that more needed to be done by government and the insurance industry to lower the costs of insurance for consumers in Northern Ireland. It also believed that car insurance premiums here have to be fair and affordable. In the **Council's** view, that the EU ruling will not achieve this aim.
- 2.6 **The Equality Commission** expressed the view that it was important, through discussions with the industry and stakeholders, that robust data on the quantitative impacts the judgement is collected and collated. The **Commission** said this was necessary to help inform the findings of the final equality impact assessment.
- 2.7 **The Women's Support Network (WSN)** said, on the whole, that it considered the assumed impacts of the underlying assumptions of the ECJ judgement outlined in the consultation document to be reasonable. It was disappointed, however, that more had not been done to emphasise the extent to which women here will be negatively affected by the ruling. **WSN** pointed out that at July 2012, there were 18,500 women claiming unemployment related benefits and some 196,000 economically inactive women between the ages of 16-64. The realisation that women will be asked to pay substantially increased insurance premiums was therefore a major concern for **WSN**.
- 2.8 **WSN** agreed with the assumption in the consultation document that the ECJ ruling would adversely affect consumers. It pointed out, however, that the impact would be far worse for women with the very real possibility of cross subsidisation of premiums between the genders. It went on to say that a careful female driver will pay the same price for insurance as her careless male counterpart – in essence she will be subsidising the cost of his insurance. **WSN** drew attention to the PSNI Annual Report, which states that males aged between 16 to 24 are the

most likely to be killed or seriously injured in road traffic accidents. It went on to point out that EU law which, prima facie, was intended to stop discrimination based on gender, seemed to have the potential to cause injustice to young women.

- 2.9 **WSN** made the point that there was an inherent assumption that women and men earn the same income and thus are equally able to afford car insurance/life insurance. It said that across the UK, men continue to be paid more on average than women doing the same jobs thus revealing a UK-wide gender pay gap. **WSN** said that many women would not be able to afford increases in car insurance and thus would they would not be able to use their car. In its opinion, this would create further barriers to transport for both employed and unemployed women.
- 2.10 **WSN** said that for women living in rural areas, public transport was inaccessible and unaffordable and as a consequence, for many women, the use of a car was essential. The **Consumer Council** made a similar point saying that any increase in car insurance premiums may, in effect isolate rural people who have no other means of transport. The **Consumer Council** drew attention to an OFT report into the car insurance market (December 2011), which quantified the problems for rural consumers. High car insurance premiums put rural consumers at a huge disadvantage with the result that they can often be excluded socially and economically.
- 2.11 In relation to life insurance, **WSN** pointed out that if adverse selection operated as a result of the ECJ ruling and increased the cost of life insurance, this would also create difficulties for women. As women have a higher life expectancy than men, women would be less inclined to buy life insurance if prices were high. **WSN** was concerned that a gender neutral approach to life insurance could induce stress and anxiety for many older women. It pointed out that currently 60% of women in GB have no life insurance cover and this situation would only get worse following the introduction of the new gender neutral provisions.
- 2.12 **Disability Action** made the point that court decisions may have both positive and negative implications. It was disappointed therefore that the potential positive impacts of the judgement had not been fully articulated in the consultation document. **Disability Action** was pleased, however, that the judgement reaffirmed the fundamental importance within EU law of the principle of equal treatment for men and women and it highlighted comments made by the

Advocate General, A G Kokott, in relation to the case. **Disability Action** believed that the positive and negative implications of the judgement should have been reported fairly in order to elicit consultation responses based on all of the facts.

- 2.13 The **PSNI** challenged the assertion at paragraph 2.6 of the draft Regulatory Impact Assessment, that “*as premiums for (generally higher risk) male drivers fall, then they may purchase higher-powered cars or increase the riskiness of their driving*”. It said that the Impact Assessment offered no evidence that this may be a consequence with the result that the comment seemed speculative. If research from other Member States had shown this to be the case, this should have been included in the Impact Assessment.
- 2.14 The **PSNI** went on to say that if people from lower risk groups were, due to the increased cost of their insurance premiums, to start to drive without insurance (or not to drive at all), this would have little impact on road safety. **PSNI** made the point that currently; uninsured drivers are a generically high risk group as they comprise those who partake in risky driving behaviour. Just because someone from a non-risk taking group drives without insurance, they do not automatically change their driving behaviour.
- 2.15 The **Soroptimists** accepted the assumed impacts set out in the Regulatory Impact Assessment.

OFMDFM response

- 2.16 Notwithstanding the wide range of comments received on the impact of the judgement on consumers and industry, the consultation responses have not materially altered the validity and content of the draft Regulatory Impact Assessment. However, in light of the comments made by the PSNI, OFMDFM has reconsidered the content of paragraph 2.6 of the draft Regulatory Impact Assessment.
- 2.17 Paragraph 2.6 of the draft Regulatory Impact Assessment contained an assertion that “*as premiums for (generally higher risk) male drivers fall, then they may purchase higher-powered cars or increase the riskiness of their driving*”. The same assertion appeared in HM Treasury’s corresponding Impact Assessment drawing upon findings contained in the Association of British Insurers Research Paper No. 24 (2010) – “The Use of Gender in Insurance Pricing”. Having reviewed the analysis and findings contained in the ABI’s research paper, the

Department has been decided to remove the assertion from the final Regulatory Impact Assessment.

- 2.18 The Equality Commission expressed a view that robust data on the quantitative impacts of the judgement needed to be collected and collated. The final version of the Sex Discrimination Order 1976 (Amendment) Regulations (NI) 2012 includes a provision requiring OFMDFM to review and report on the operation and effect of the Regulations within five years of the Regulations coming into operation. This will require the Department to put in place the necessary arrangements to conduct such a review, including the need collect relevant data.

Chapter 3 – Draft Regulations

Consultation question 2

Do you agree that the scope of the draft Regulations should be restricted to repealing Article 46 of the Sex Discrimination (Northern Ireland) Order 1976?

- 3.1 In general, the **Equality Commission** welcomed the steps being taken to give effect to the European Court of Justice's decision. In particular, it welcomed the proposed repeal of Article 46 of the Sex Discrimination (Northern Ireland) Order 1976 so that the current exemption would not apply to contracts concluded **after** 21 December 2012. The **Equality Commission** said it had consistently taken the view that it was opposed to the inclusion of an exception in sex equality legislation which allowed insurers to treat people differently on grounds of sex.
- 3.2 The **Institute and Faculty of Actuaries** referred to its response to the HM Treasury consultation document as the GB Regulations were largely similar to the NI Regulations. It stated that limiting the changes to repealing Article 46 of the Sex Discrimination Order leaves a number of areas of uncertainty which could create market instability. The **Institute** suggested that it would be helpful if the regulatory changes could go further and address points covered in the European Commission's guidelines, for example in respect of medical underwriting. It also suggested that it would be beneficial to have greater clarity around areas where gender specific mortality tables are currently required to be used outside pricing.
- 3.3 The **Association of British Insurers** enclosed a copy of its response to the HM Treasury consultation. The Association agreed with HM Treasury's proposal to make minimal legislative changes.
- 3.4 **Disability Action** argued that the ruling potentially opened up the possibility of action regarding the use by insurers of disability as a risk rating factor in insurance provision. **Disability Action** believed that the changes to Article 46 of the Sex Discrimination Order arising from the Test-Achats case must encourage discussion around other areas covered by Article 21(1) of the Charter of Fundamental Rights of the European Union which prohibits discrimination across a number of grounds.

- 3.5 The **Soroptimists** agreed that the scope of the Regulations should be restricted to repealing Article 46 of the Sex Discrimination Order.

OFMDFM response

- 3.6 The Department is satisfied that there is sufficient support for the proposed legislative amendment to the Sex Discrimination (NI) Order 1976. However, on the basis of legal advice, the Department has had to limit the scope of the proposed repeal of Article 46. By virtue of Article 46(1), the Article applies to Parts III to V of the 1976 Order (employment, education matters, goods, facilities or services, premises and other unlawful acts). The scope of Article 46 is therefore much broader than the provisions being repealed by the corresponding GB Regulations - paragraph 22 of Schedule 3 to the Equality Act 2010.
- 3.7 As there is no option other than to comply with the ECJ judgement, the Department will press ahead to bring forward legislation to amend Article 46 of the Sex Discrimination Order. The final version of the Regulations will be amended to limit the repeal of Article 46 so that it no longer applies to the provisions of Article 30 of the 1976 Order (discrimination in the provision of goods, facilities or services).
- 3.8 In the final version of the GB Regulations, HM Treasury added a new Regulation 4 (review) to place a duty on Treasury to review the operation and effect of the Regulations and to publish a report within 5 years after the Regulations come into force. The review duty is a new requirement of the UK's Better Regulation Executive and is included in all new regulations implementing EU law (in accordance with HM Government Guidance on "Sunsetting Regulations" – December 2011). OFMDFM has decided to include a similar review provision in the Northern Ireland Regulations.

Chapter 4 – Indirect discrimination

Consultation question 3

Do you have any comments, in relation to the draft Regulations, on the scope of indirect discrimination in insurance and related services?

- 4.1 The **Institute and Faculty of Actuaries** referred to its response to the HM Treasury consultation document. The **Institute** said that while the prohibition on using gender directly as a risk factor was relatively straightforward, it thought, in practice, that it may be complex to establish whether a factor is risk factor with a legitimate aim or whether it could be seen to be acting as a proxy for gender.
- 4.2 The **Institute and Faculty of Actuaries** recognised that whether a risk factor represented indirect discrimination rested with the courts. However, in its opinion, there is potential for a long period of uncertainty until the legal situation is clarified. In view of this, the **Institute** pointed out that guidance either from government or the EU, focussing on the appropriateness of some of the rating factors currently used within the market, could be helpful in reducing uncertainty in this area and the risk that uncertainty creates.
- 4.3 The **Association of British Insurers** enclosed a copy of its response to the HM Treasury consultation. The response acknowledged that indirect discrimination could be justified if the aim was legitimate and the means of achieving it were appropriate and necessary. The response went on to say that physiological differences, and other risk factors, could be taken into account by insurers where there was a legitimate aim and the means of achieving it were appropriate.
- 4.4 The **Equality Commission** expressed the view that neither the ECJ judgement nor the Gender Directive required any changes to be made to the definition of indirect discrimination in the Sex Discrimination Order. The **Equality Commission** went on to recommend that a range of inconsistencies which currently exist within the Sex Discrimination Order regarding the definition of indirect discrimination should be addressed as part of a wider reform of discrimination law here. It acknowledged, however, that these areas are outside

the scope of the Gender Directive and the current proposal to comply with the Test Achats ruling.

- 4.5 **Disability Action** agreed with the consultation document that insurers are unlikely to fall foul of the judgement if they are able to show a robust “cause and effect” relationship between a given factor and the level of risk presented by policyholders.
- 4.6 The **PSNI** pointed out that, statistically, male drivers are more likely to be involved in road traffic accidents involving death or serious injury than women and that they are also more likely to partake in risky driving behaviour. Hence insurance premiums have always been higher for men. The **PSNI** noted the comments on indirect discrimination at paragraphs 14 and 15 of the consultation document. It said that it awaited the position which insurers would adopt around risks factors which correlate with gender.

OFMDFM response

- 4.7 The Department is mindful of the concerns that it may be difficult for providers to assess whether risk factors that correlate with gender have a legitimate aim or are proportionate. The EC guidelines are helpful in confirming that the use of risk factors which correlate with gender should still be possible within the scope of the judgement, provided they are true risk factors in their own right. Ultimately, insurers will need to seek legal advice and make their own assessment of which risk factors they are content to continue to use after 21 December 2012.
- 4.8 Further clarity on the precise interpretation of indirect discrimination can only be provided by the courts. As a consequence, the Department does not intend to make any legislative changes in relation to the issue of indirect discrimination, nor does it intend to issue any further guidance on this issue.

Chapter 5 – Definition of new contract

Consultation question 4

Do you have any comments on the definition of a “new contract” in the context of implementation of the Test Achats judgement?

- 5.1 **The Attorney General’s Office** stated that OFMDFM may wish to consider whether or not it accepted the EU Commission’s view about the concept of a “new contract” being an autonomous concept of EU law which must be interpreted uniformly throughout the European Union. The **Attorney General’s Office** pointed out that paragraph 9 of the Commission’s guidelines on the application of the Gender Directive (in light of the ECJ Test Achats ruling) appear to go further than the position outlined in paragraphs 17-18 of OFMDFM’s consultation document. In view of this, the **Attorney General’s Office** suggested that it might be best if no specific meaning of “new contract” was offered in the amending Regulations.
- 5.2 The **Equality Commission** considered that the EC guidelines were helpful in clarifying what constituted a “new contract”. It took the view that the EC guidelines would help ensure a consistent approach to implementation of the judgement across Member States.
- 5.3 The **Institute and Faculty of Actuaries** referred to its response to the HM Treasury consultation document. The **Institute** said in that response that the definition of a new contact affected two distinct areas of insurance company activity – the processing of new contracts and changes to existing policies. The **Institute** pointed out that a statement in HM Treasury consultation document that *“the precise interpretation of a new contract will currently differ between Member States as such definitions are typically a matter for national law”* appeared to contradict paragraph 8 of the EC guidelines. The **Institute** called for a statement by government to provide insurers with a higher degree of certainty regarding the legal framework in which they are required to operate.
- 5.4 Regarding insurance companies processing new contracts, the **Institute** stated that its interpretation of the draft legislation was that it was consistent with the

paragraph 11 of the EC guidelines. In its opinion, the guidelines appeared to provide a definitive statement that any new contract that had not been concluded by 21 December 2012 must be issued on unisex grounds. As regards changes to existing policies, the **Institute** said that a number of areas are addressed by EC guidelines. For example, automatic renewals, inflation increases and guaranteed options on pre-defined terms can all generally be considered as not triggering a “new” contract. The **Institute** anticipated that a precise interpretation of what constituted a new contract may often depend on specific policy wordings.

- 5.5 The **Association of British Insurers (ABI)** enclosed a copy of its response to the HM Treasury consultation. This response welcomed Treasury’s confirmation that only new contracts are affected by the ECJ judgement. It agreed with Treasury’s view that the usual principles of contract law would determine whether a new contract had been formed. It also agreed that the definition of a new contract is a matter for national law and that case law provided a good framework for determining what constitutes a new contract. The **ABI** response, however, said that there were a number of areas where implementation of the judgement could potentially create uncertainty, and referred in particular to mid-term adjustments and renewals. In the **ABI’s** opinion the EC guidelines were of limited legal value and therefore saw advantage in government issuing further guidance on this issue.
- 5.6 **Disability Action** agreed with the statement in the consultation document that the usual principles of contract law in Northern Ireland (as applied by the courts in the field of insurance) would determine when a new contract had been formed. **Disability Action** stated that the EC guidelines should be used by insurers and courts to aid interpretation of the intended application of the Gender Directive.

OFMDFM response

- 5.7 The Department understands the desire for certainty on issues surrounding the definition of a new contract. However, it cannot provide any further clarity on the interpretation of the Gender Directive with any authority. As there is no definition of what constitutes a new contract within the Gender Directive, it will ultimately be for the courts to determine whether the definition used by Member States is in keeping with the Directive and the ECJ judgement. Any further guidance provided by government would not necessarily align with decisions the courts may make in future and would only serve to provide false certainty to industry. The EC guidelines, therefore, may be considered to be helpful. While the

guidelines are not law, they represent the European Commission's interpretation of the intended application of the Gender Directive and courts may therefore find them to be persuasive and influential.

Chapter 6 – Collection of data

Consultation question 5

Neither the collection of data on sex nor the use of sex for the purposes of assessing overall risk are prohibited by the Directive or the Sex Discrimination (Northern Ireland) Order 1976. No provision is therefore needed in the Regulations. Do you agree?

- 6.1 The **Institute and Faculty of Actuaries** referred to its response to the HM Treasury consultation document. The **Institute** considered that insurers should continue to be permitted to collect data on gender and to use it for purposes other than pricing. It was pleased that the ability to collect data on gender was confirmed within the EC guidelines.
- 6.2 The **Association of British Insurers** enclosed a copy of its response to the HM Treasury consultation. The response agreed that no further changes were necessary. The response went on to say that the use of data on sex for purposes of assessing overall risk and the collection of data on sex are allowed under the Gender Directive. The ECJ ruling does not make any changes in relation to this matter.
- 6.3 The **Equality Commission** agreed that neither the collection of data on sex nor the use of sex for the purposes of assessing overall risk are prohibited by the Gender Directive or the Sex Discrimination Order. It agreed that no provision was needed in the Regulations.
- 6.4 **Disability Action** believed that gender was a crude measure for the purposes of assessing the overall risk presented by a pool of people without any consideration of the actual risks involved. **Disability Action** pointed out that the use of a person's gender as a kind of substitute criterion for other distinguishing features was incompatible with the principle of equal treatment for men and women.

- 6.5 **Disability Action** said that insurance premiums must be linked to actual risk. If the intention of insurers was to use gender as a substitute measure, then perhaps additional provision was required in the Regulations.
- 6.6 The **Soroptimists** agreed that no further provision was needed in the Regulations.

OFMDFM response

- 6.7 The Department's assessment continues to be that Article 5(1) of the Gender Directive does not prohibit the use of sex as an actuarial factor provided this does not result in individual differences in premiums and benefits. The EC guidelines are useful in confirming this position. The Department is satisfied that industry and stakeholders agree with this assessment.

Chapter 7 – Pensions and annuities

Consultation question 6

Do you have any comments on the impact of the ECJ judgement on pensions and annuities?

- 7.1 The **Equality Commission** said it was regrettable that there was a lack of clarity in relation to what came under the remit of the Equal Treatment Directive (which relates to employment and vocational training) and the Gender Directive (which relates to goods and services outside the workplace). The **Equality Commission** noted that the UK Government had indicated that it was not in a position to provide further clarity on the exact interaction between the two Directives. The **Equality Commission** recognised, however, that clarification by the courts was needed in order to establish boundaries between the Directives.
- 7.2 The **Equality Commission** welcomed the fact that the UK Government had indicated that it would consider the impact of operating two different types of pension schemes and that it intended to monitor this impact before deciding whether further action was appropriate. The **Equality Commission** said it was important that the impact was also monitored effectively in Northern Ireland.
- 7.3 The **Association of British Insurers (ABI)** enclosed a copy of its response to the HM Treasury consultation. In this response, the **ABI** said that the Test Achats judgement was only applicable to Directive 2004/113/EC so it did not directly impact on occupational pensions which were governed by Directive 2006/54/EC. It said that the differentiated impact on the two legislative frameworks would lead to an anomaly. The **ABI** encouraged the UK Government to correct this anomaly, suggesting that the issue be considered during a forthcoming review of Directive 2006/54/EC.
- 7.4 The **Institute and Faculty of Actuaries** referred to its response to the HM Treasury consultation document where it made the following remarks:
- ‘By excluding benefits that are payable in pursuance of the employers arrangements for employees, it could be suggested that occupational defined contribution schemes may be able to purchase pension annuities on gender-*

differentiated rates. This approach could change member behaviour such that females secure financially improved terms by using the funds provided by the scheme to purchase a gender neutral annuity, whereas a male may benefit from taking an annuity purchased from within the scheme. This could lead to members of occupational defined contribution schemes on average securing better rates than other customers making the same purchase from a different pensions vehicle, for example, a personal pension’.

- 7.5 **Disability Action** agreed with the comment in the consultation document that the position on pensions and annuities was currently confused. It believed that the impact of the judgement would reinforce the principle of equality in all matters unless there was strong lawful justification for not doing so.

OFMDFM response

- 7.6 The EC guidelines states that the Gender Directive applies to annuity purchases where the employer is not involved. The Department accepts that there may be a degree of ambiguity around what exactly is meant by “separate from the employment relationship” or what constitutes “involvement from an employer”. However, once again, such ambiguity at a European level can only ultimately be resolved by further clarity in European law or by the courts. The Department is therefore not in a position to provide further clarity on the exact interaction between the two Directives beyond that already provided for in domestic legislation.

Chapter 8 – Section 75 considerations

Consultation question 6

Do you consider that the policy change will have any positive or negative equality impacts on any section 75 categories that have not been identified in this document and, if so, what are they?

- 8.1 The **Equality Commission** expressed the view that the scarcity of insurance data emphasised the need for greater transparency as regards data collection within the insurance industry. The **Equality Commission** recommended that data on the use of equality factors in financial services was collected and collated by insurance providers in a more transparent, robust and easily understood manner. In order to fully understand the quantitative impacts of the legislative change, the **Equality Commission** recommended further discussions with the insurance industry and key stakeholders.
- 8.2 **Disability Action** believed that further consideration should be given in the Equality Impact Assessment to the affects of the judgement on people with multiple protected characteristics.

OFMDFM response

- 8.3 The final version of the Sex Discrimination Order 1976 (Amendment) Regulations (NI) 2012 includes a provision requiring OFMDFM to review and report on the operation and effect of the Regulations within five years of the Regulations coming into operation to determine the impact of the ECJ judgement. This will require the Department to put in place the necessary arrangements to conduct such a review, including the need collect relevant data.

Chapter 9 – Other comments

- 9.1 In addition to answering the specific questions posed in the consultation document, some respondents submitted general comments. These included the following.
- 9.2 **The Department of the Environment (DOE)** responded to a request from its Assembly Environment Committee to comment on possible implications for road safety arising from the ECJ judgement. The **DOE** response was copied to OFMDFM.
- 9.3 In its response, **DOE** drew the Environment Committee's attention to a section within the OFMDFM consultation document which stated that "*as premiums for (generally higher risk) male drivers fall, then they may purchase higher powered vehicles or increase the riskiness of their driving.*" The **DOE** response pointed out that there was some uncertainty about whether premiums for male drivers would fall significantly or indeed at all as a result of the gender ruling, since there continued to be a preponderance of males involved in serious or fatal collisions in Northern Ireland. It was therefore likely that insurers would continue to pay out more in claims costs for male drivers as opposed to females. As a consequence it would be difficult to say with any degree of certainty that this would be the outcome.
- 9.4 The **DOE** response mentioned that the Environment Minister (Alex Attwood) was committed to taking any action possible to create the circumstances to bear down on motor insurance costs. This work was all the more pressing given the prospect that the gender ruling would impact on insurance costs and thereby potentially on road safety. The response drew the Environment Committee's attention to some specific steps which the Minister had already taken and to some ongoing activities within DOE. These included the following:

Road Safety Initiatives

- **DOE** stated it was taking forward a number of major road safety initiatives. These included: graduated driver licensing, anti drink driving measures, mutual recognition of penalty points between Northern Ireland and Ireland,

and anti drug driving measures. While the primary objective of these measures was to reduce road deaths and serious injuries, the subsequent reductions in insurance costs would be an important secondary benefit and would help to offset any increase in premiums resulting from the gender ruling.

Telematics

- **DOE** stated that it was increasingly aware of the potential of telematics, both to reduce insurance costs and to improve driver performance and safety. DOE officials have carried out a telematics market place investigation which involved ABI, DfT, RoSPA, Transport Scotland and a number of local insurers. A number of different companies have a variety of telematics-based insurance products on the Northern Ireland market and are collecting and analysing data on driver performance. Some use installed black boxes devices while others employ mobile apps.
- There was emerging evidence of the effectiveness of telematics in improving road safety, particularly among young drivers, fleet drivers and those who drive for work. Initially, any benefits of lower insurance costs achieved through telematics is expected to be felt at the individual driver level rather than across the board. Longer term, if telematics becomes more mainstream and is demonstrably improving driver behaviour and collision rates, the technology has the potential to provide downward pressure on the cost of motor insurance more generally. In the short term, however, implementation of the gender ruling could encourage more females to take up telematics products to avoid having to pay higher premiums.

Comparative motor insurance costs study

- An Office of Fair Trading Report (December 2011) found motor insurance premiums in Northern Ireland to be approximately 11% higher than in Great Britain. The cost disparity is particularly marked in rural areas, with quotes here between 30% and 80% higher than quotes in similar areas in Great Britain. As a follow-on from the OFT research, the DOE Minister commissioned a DOE/ABI study comparing rural and urban motor insurance costs between England and Northern Ireland. The timescale for first main findings from this study is early 2013

Claims Management Companies (CMCs)

- The OFT report into the motor insurance market identified that referral fees paid to CMCs add up to £10 to each motor insurance policy. DOE officials have been participating, along with officials from DFP, DoJ and DETI, in a DFP-led group, the remit of which is to examine the issues raised in relation to CMCs and the cost of car insurance in Northern Ireland. Specific issues the group has been investigating are the regulation of CMCs and the impact of referral fees on property damage and personal injury cases; the extent and impact of current legislation and regulatory practice banning solicitors here from paying referral fees; and whether legislation to ban referral fees more extensively (as in England and Wales from April 2013) should be adopted here.
- 9.5 The **Consumer Council** believed that it was up to industry to respond with other ways to assess risk (e.g. by increasing the number of local insurance companies and exploring the use of telematics). It encouraged insurance industry to continue to look at innovative ways to assess risk to ensure that individual drivers are assessed fairly.
- 9.6 The **Consumer Council** indicated that it had asked the Department of the Environment to come up with proposals to reduce risks to young drivers. The **Council** pointed out that the Environment Minister had responded to this request by bringing forward proposals in relation to Graduated Driver Licensing.
- 9.7 The **Consumer Council** said that it had been working with the NI Assembly to ensure that there was an investigation into the insurance market here. It also said that it supported the establishment of an All-Party Working Group on Insurance by the Assembly and that it was providing policy guidance and secretariat support to this Group.
- 9.8 The **Consumer Council** highlighted a number of areas where local consumers are finding it difficult to pay for car insurance. It drew attention to (1) the high dependence on motor vehicles for social inclusion; (2) the prohibitive cost of insurance, especially for young people; (3) the high number of accidents and uninsured drivers; and (4) the effect of the legal process and the detrimental effect this has on consumer premiums.
- 9.9 The **Association of British Insurers (ABI)** enclosed a copy of a letter which it sent to the Scottish Parliament (in February 2012) outlining how it had worked

with its members in preparation for the introduction of the ruling. Some of the steps taken by the ABI to provide assistance to insurance companies are:

- regular updates throughout the Test Achats legal process (since September 2009);
- an alert letter to all members advising them of the possibility of gender neutral pricing (January 2010);
- establishing a website to serve as a hub of information on the implications of the ECJ ruling (February 2010);
- when the ECJ judgement was published, it informed members and liaised with the European Commission, HM Treasury and the FSA to discuss implementation issues;
- establishing a Legal Working Party to discuss the legal implications of the EC guidelines.

Feedback suggested that member companies had utilised these tools and that companies were taking independent legal advice to ensure that individual practices were in line with the ECJ judgement and the EC guidelines.

9.10 **The Women's Support Network (WSN)** said that before committing to upholding the ECJ ruling, the Executive needed to fully commit to ensuring equal pay for men and women in positions of the same status. **WSN** also stated that the Executive needed to improve public transport systems to enable women to have a real choice between using a car or opting for a more affordable mode of transport.

9.11 **Disability Action** was disappointed to note that the consultation document did not contain any statement that it was available in alternative formats, if required. It believed that it was important that all matters for public consultation are available to all citizens and that accessibility measures are not confined to matters considered to be of interest to people with disabilities.

Annex - List of Respondents

The Association of British Insurers

Commissioner for Older People for Northern Ireland

The Consumer Council

Disability Action

Department of the Environment (response to the Environment Committee)

The Equality Commission for Northern Ireland

The Institute and Faculty of Actuaries

Northern Ireland Judicial Appointments Commission

Office of the Attorney General for Northern Ireland

Office of the Lord Chief Justice

Police Service of Northern Ireland

Soroptimist International (Northern Ireland region)

Women's Support Network

The Sex Discrimination (Northern Ireland) Order 1976

as amended by the Sex Discrimination Order 1976 (Amendment) Regulations
(Northern Ireland) 2012 (SR No. 462)

TRANSPOSITION NOTE

European Parliament and 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		
<p>Council Directive 2004/113/EC (“the Gender Directive”) prohibits discrimination in the access to and supply of goods and services on grounds of gender.</p> <p>Article 5 of the Gender Directive regulates the use of actuarial factors related to sex in the provision of insurance and other related services. Article 5(1) provides that, for new contracts concluded after 21 December 2007, the use of sex as an actuarial factor in the calculation of premiums and benefits must not result in differences in individuals’ premiums and benefits. Article 5(2) provides for derogation from this rule by allowing Member States to maintain proportionate differences in individuals’ premiums and benefits where the use of sex is a determining factor in the assessment of risk based on relevant and accurate actuarial and statistical data. In a judgement delivered on 1 March 2011, the Court of Justice of the European Union in Case C-236/09 (Association Belge des Consommateurs Test–Achats ASBL and Others v Council) declared Article 5(2) of the Gender Directive invalid with effect from 21 December 2012.</p> <p>This table has been prepared by the Office of the First Minister and deputy First Minister. It sets out the objective of Article 5 of the Gender Directive and how it is implemented in Northern Ireland following the declaration by European Court of Justice that Article 5(2) is invalid from 21 December 2012. The Office of the First Minister and Deputy First Minister is responsible for implementation.</p>		
Article of Directive 2004/113/EC	Objective of Article	Implementation
Article 5 (actuarial factors) Article 5(1)	Regulates the use of actuarial factors related to sex in the provision of insurance and other related financial matters. Provides that for new contracts concluded on or after 21 December 2007, the use of sex as an actuarial factor in the calculation of premiums and benefits must not result in differences in individuals’ premiums and benefits (thus providing for gender-neutral pricing).	Article 46 of the Sex Discrimination (Northern Ireland) Order 1976 (the “1976 Order”), as amended by paragraph 13 of Schedule 2 to the Sex Discrimination (Amendment of Legislation) Regulations 2008, to specify the circumstances under which insurance companies may charge different premiums or offer different benefits to men and women.

<p>Article 5(2)</p>	<p>Permits Member States to derogate from Article 5(1) (gender-neutral pricing) in limited circumstances. It permits Member States to maintain proportionate differences in individuals' premiums and benefits where the use of sex is a determining factor in the assessment of risk based on relevant and accurate actuarial and statistical data (thus permitting gender-sensitive pricing).</p>	<p>Regulation 2 of the Sex Discrimination Order 1976 (Amendment) Regulations (Northern Ireland) 2012 amends Article 46 of the 1976 Order to remove the exception which specified the circumstances under which insurance companies may calculate different insurance premiums and benefits for men and women in relation to areas to which Article 30 of the 1976 Order is concerned (discrimination in the provision of goods, facilities or services).</p> <p>Regulation 3 of the Sex Discrimination Order 1976 (Amendment) Regulations (Northern Ireland) 2012 provides that notwithstanding the amendments made to Article 46 of the 1976 Order by regulation 2, the Article continues to apply to insurance contracts concluded before 21 December 2012.</p> <p>Regulation 4 of the Sex Discrimination Order 1976 (Amendment) Regulations (Northern Ireland) 2012 requires the Office of the First Minister and deputy First Minister to review the operation and effect of the Regulations and to publish a report within five years after the Regulations come into operation.</p>
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