

EXPLANATORY MEMORANDUM TO

The Sex Discrimination Order 1976 (Amendment) Regulations Northern Ireland) 2012

2012 No 462

1. Introduction

- 1.1. This Explanatory Memorandum has been prepared by the Office of the First Minister and deputy First Minister to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.
- 1.2. The Statutory Rule is made under section 2(2) of the European Communities Act 1972 and is subject to the negative resolution procedure.

2. Purpose

- 2.1. The Regulations amend the Sex Discrimination (Northern Ireland) Order 1976 (the 1976 Order) to reflect a change to European Union law brought about by a ruling by the European Court of Justice (ECJ) on 1 March 2011. The ECJ ruled that, from 21 December 2012, the use of sex as a risk factor should not result in differences in individuals' insurance premiums and benefits. The exemption that is contained in the EU Gender Directive (Directive 2004/113/EC) of 13 December 2004 to allow such practices, will cease to be valid from that date.
- 2.2. The Regulations amend Article 46 of the 1976 Order to remove the exemption in that Article which gives effect to the exemption in the Gender Directive in so far as it applies to Article 30 of the 1976 Order (discrimination in the provision of goods, facilities or services). The Regulations also provide that the insurance exemption in Article 46 of the 1976 Order continues to apply to a contract concluded before 21st December 2012, as if the Regulations had not been made. The Regulations also require the Office of the First Minister and deputy First Minister to review the operation and effect of the Regulations and publish a report within five years of the Regulations coming into operation.

3. Background

- 3.1. The Gender Directive prohibits discrimination on the basis of sex in the provision of goods and services. It includes a requirement that Member States shall ensure that the use of sex as a factor in the calculation of premiums and benefits for the purposes of insurance and related financial services shall not result in differences in individuals' premiums and benefits.
- 3.2. However, the Gender Directive also includes an exemption to this rule (Article 5(2)), allowing Member States to permit 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. All EU Members States took advantage of this exemption to some extent. In Northern Ireland this was achieved by

amending Article 46 of the 1976 Order to include an exemption reflecting the Gender Directive exemption.

- 3.3. In March 2011, a ruling on a case brought by a Belgian consumer group Test Achats, the ECJ stated that the insurance exemption in the Gender Directive was contrary to the objectives of equal treatment between men and women. The court therefore ruled that the exemption would cease to be valid from 21 December 2012, giving industry time to adjust their systems and practices before this date. 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 Court took the view that this principle applies equally to men and women because they are comparable, and should therefore be treated as such for the purposes of insurance.
- 3.4. The ECJ ruling is legally binding on Member States and Northern Ireland law is bound by the ruling that the derogation permitted by Article 5(2) of the Gender Directive is invalid from 21 December 2012. This means that from 21 December 2012, the requirements of Article 5(1) of the Gender Directive must be applied without derogation to any new contracts for insurance and related financial services entered into on or after 21 December 2012.

4. Consultation

- 4.1. The Office of the First Minister and Deputy First Minister issued a consultation document on 29 October 2012. The consultation period closed on 5 December 2012 and a total of 13 written responses were received. The consultation document outlined the background to the ECJ ruling, set out the Executive's view that the Court ruling applied only to new contracts entered into on or after 21 December 2012, sought views on the accompanying draft Regulations and draft Regulatory and Equality Impact Assessments and asked for views on some of the key issues arising from the ruling.
- 4.2. As the ruling is binding in Northern Ireland law, the majority of the responses received focused on the potentially adverse impacts the ruling may have for consumers, particularly women. Those who commented on the proposed Regulations agreed that an amendment to Article 46 of the 1976 Order was necessary in order to comply with the ECJ ruling.
- 4.3. A summary of the consultation responses received has been prepared and has been placed on the OFMDFM website. The consultation report sets out the key points raised by respondents and the Department's response.
- 4.4. In early 2012, the European Commission published guidelines on the scope of the ECJ ruling. The Department believes the guidelines may be useful in helping to align interpretations of insurers across Member States. A copy of the Commission's guidelines was included along with the consultation document. While the guidelines are not law, they do represent the Commission's interpretation of the intended application of the Gender Directive and courts may find them to be persuasive and influential.

5. Equality Impact

- 5.1. An Equality Impact Assessment was carried out on the impact of the ECJ ruling on the section 75 categories. The ECJ ruled that the exemption in Article 5(2) of the Gender Directive runs counter to the achievement of the objective of equal treatment between men and women in relation to the calculation of insurance premiums and benefits.
- 5.2. Implementation of the ruling is intended to have a positive impact on equality of opportunity for men and women. However, the practical effect of the ruling is that men and women will experience differential changes to the price of their insurance premiums while insurers establish new unisex rates.
- 5.3. A potential negative aspect of the ruling is that consumers belonging to the lowest risk categories are likely to lose out the most by paying higher premiums for insurance products. The change to unisex pricing will only apply to new contracts for insurance and financial services entered into on or after 21 December 2012.

6. Regulatory Impact

- 6.1. A Regulatory Impact Assessment has been prepared for the Regulations.
- 6.2. While the impact of the ban on the use of gender as a risk factor in the pricing of individual insurance policies will primarily be felt by consumers, there are also implications for the insurance industry. The impact of the ruling on the insurance industry is likely to be felt in the transitional period to unisex pricing. These are likely to include, amongst others, underwriting changes; marketing changes; sales changes; and losses as a result of consumer premium changes.

7. Financial Implications

- 7.1. As stated at paragraph 6 above, the impact of the ban on the use of gender as a risk factor in the pricing of individual policies will primarily be felt by consumers. However, data regarding the effect of the ECJ ruling on 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 the Regulatory Impact Assessment.

8. Section 24 of the Northern Ireland Act 1998

- 8.1. It is the view of the Department that the amending Regulations are compatible with section 24 of the Northern Ireland Act 1998.

9. EU Implications

- 9.1. The Regulations are necessary to amend domestic legislation to reflect a change to European Union law brought about by a ruling of the ECJ. As the ruling is legally binding on Member States there is no option other than to comply with it. A Transposition Note has been prepared and is laid along with the amending Regulations and this Explanatory Memorandum.

10. Parity or Replicatory Measure

- 10.1. The corresponding Great Britain Regulations are the Equality Act 2010 (Amendment) Regulations 2012 (SI 2012/2992) which also come into force on 21 December 2012.

11. Additional Information

- 11.1. It was not possible to meet the 21 day rule with these Regulations. The corresponding GB Regulations were made on 29 November 2012 and every effort was made to make and lay the Northern Ireland Regulations before the date on which Article 5(2) of the EU Gender Directive became invalid (21 December 2012).

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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21 December 2012



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Deputy First Minister**

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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

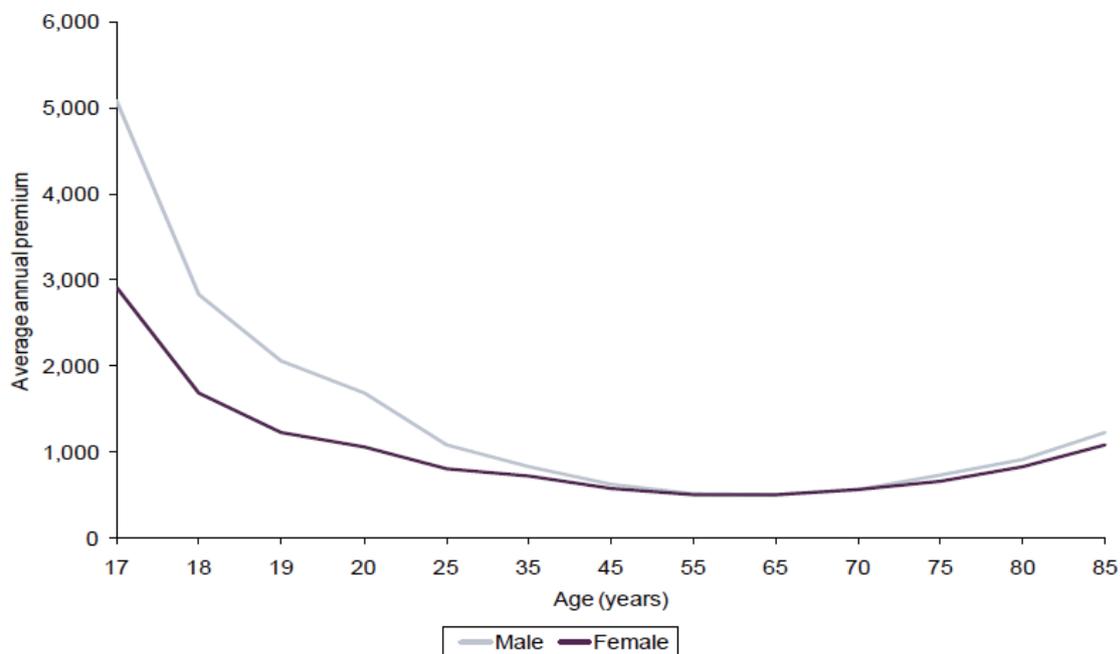
- 4.8 The price of insurance policies is determined by both competition and the information that insurers can gather on the risk that they are covering. These factors help to determine the premium that must be set for different risk categories, in order to fully allow for the likelihood of a claim and 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

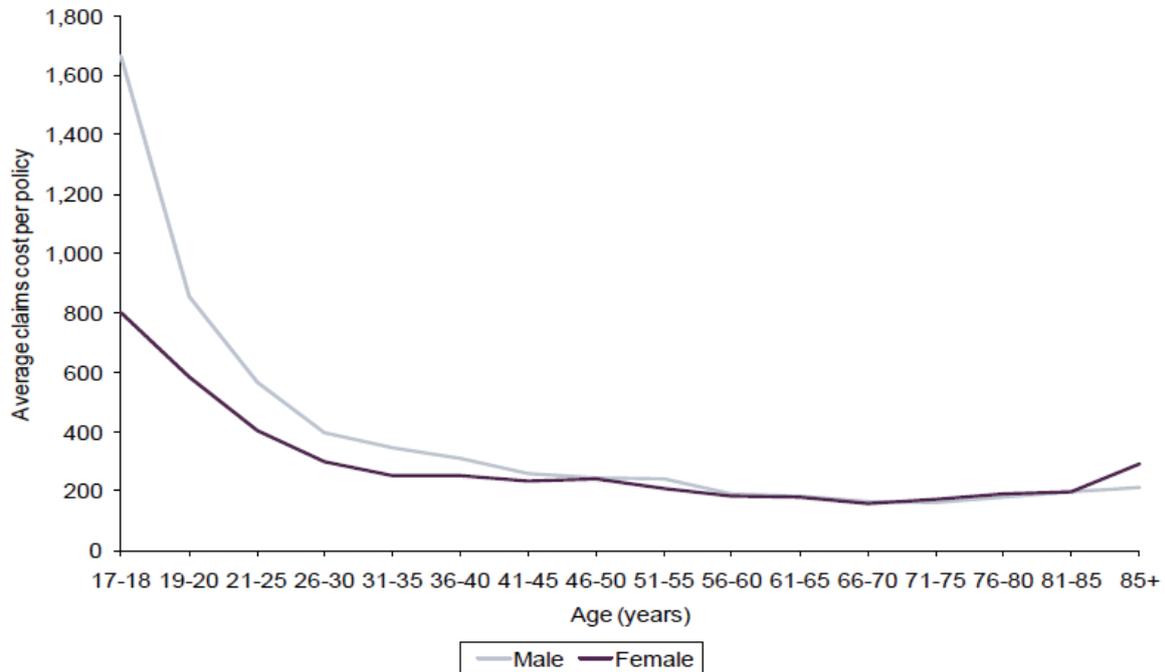
Figure 1: Graph illustrating average annual premium for comprehensive motor insurance according to age and gender



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.

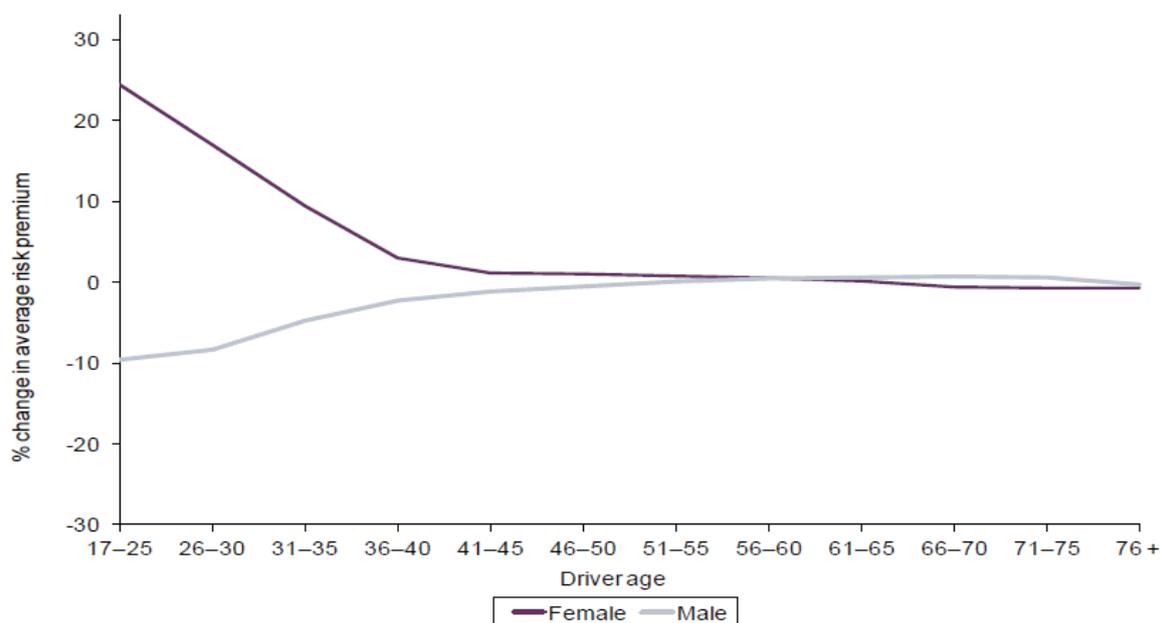
Figure 2: Graph illustrating average claims cost per policy for motor insurance according to age and gender



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.

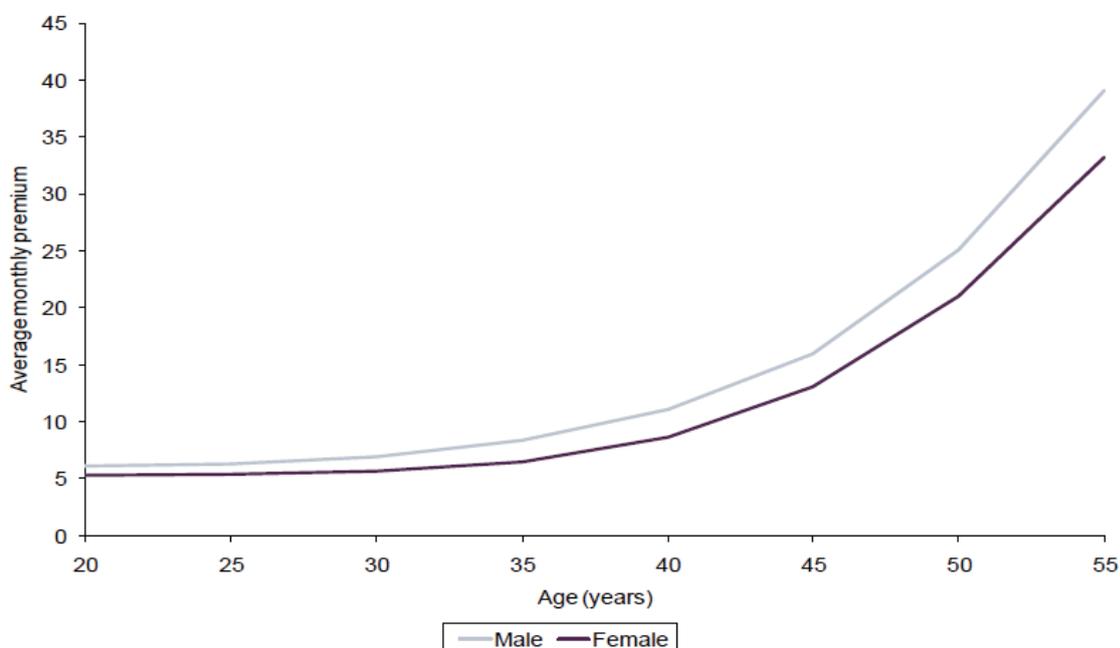
Protection market

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

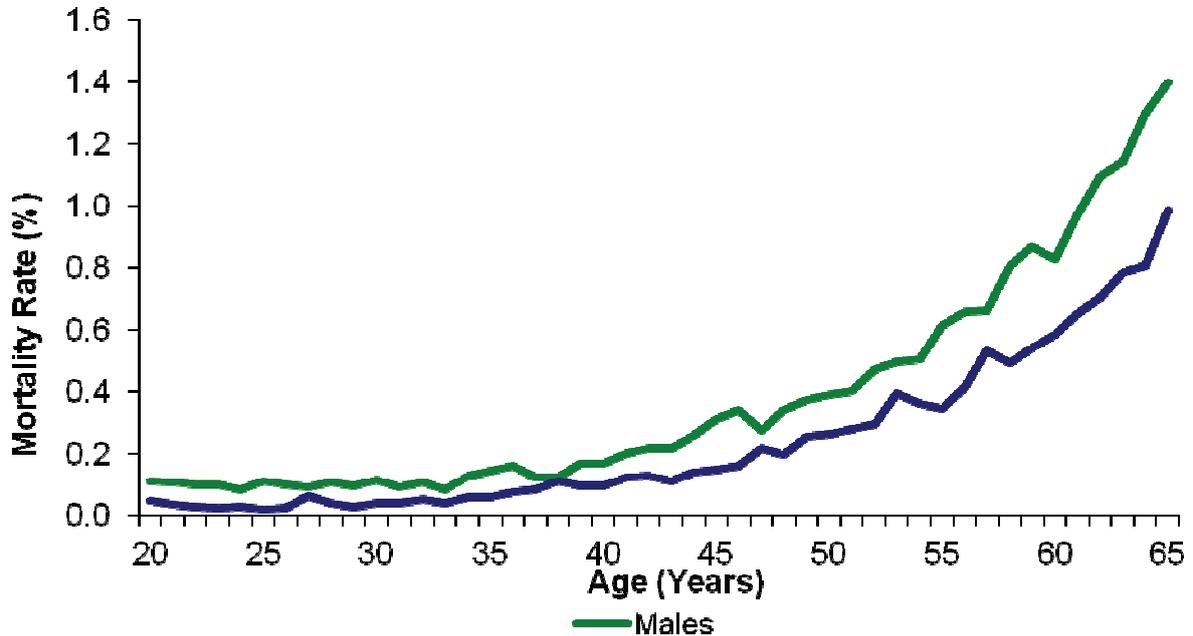


Source: ABI Research Paper No 24, 2010 – *The use of gender in insurance pricing*

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

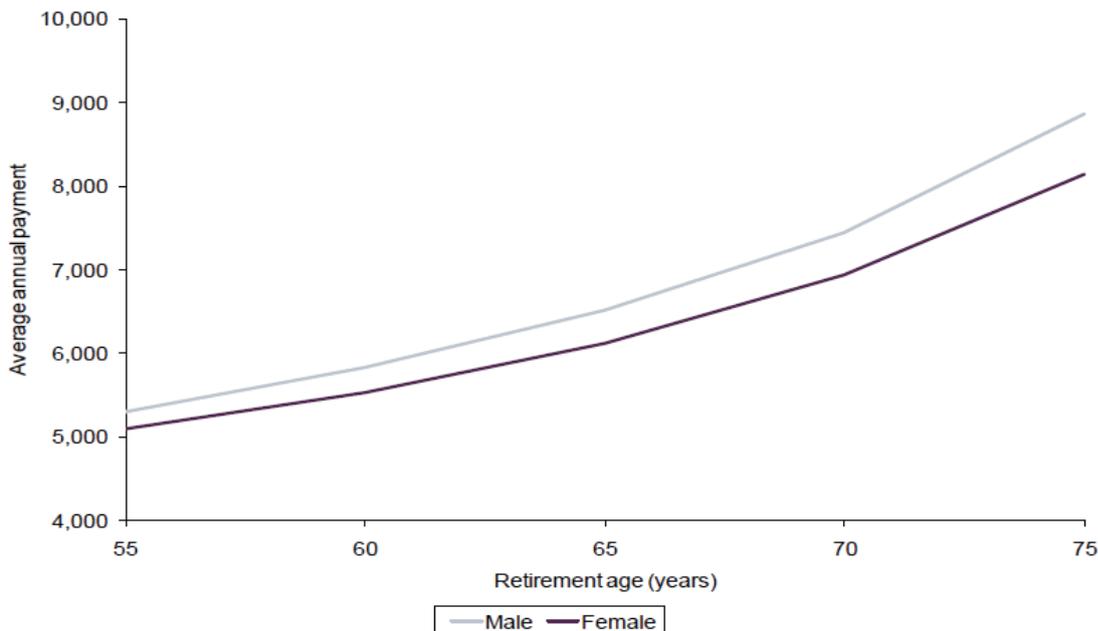
² Source Institute and Faculty of Actuaries Working Party. Based on a 50 year old, non-smoker, covering a sum of £150,000 for a term of 10 years

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.

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.

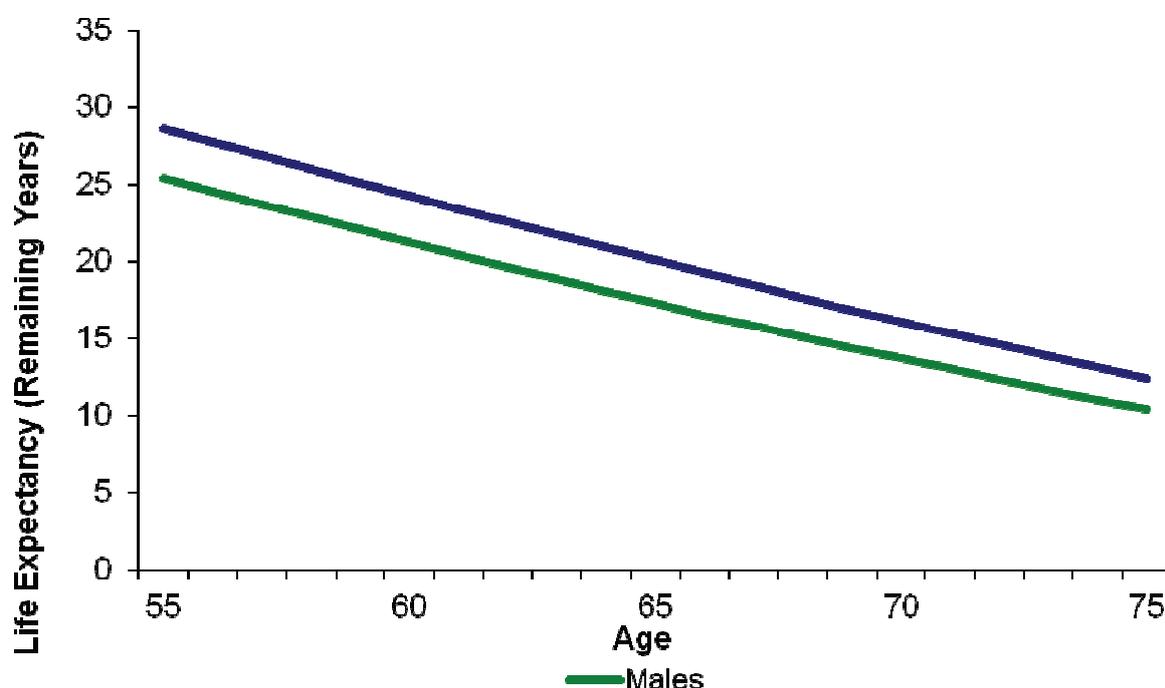
Figure 6: Graph illustrating the differences in average annual payment for a pension annuity according to age and gender



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 female annuitant. However, the figure for the post-change annuity reflects 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.

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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