

**Guidance on the Notification Procedure and the Publication
of Data Associated with the Use of Gender in the assessment
of risk for purposes of insurance and related financial
services**

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INTRODUCTION

This guidance is issued by the National Commission for the Promotion of Equality between Men and Women in accordance with its functions and in relation to Article 5 of Legal Notice 181 of 2008 entitled Access to Goods and Services and their Supply (Equal Treatment) Regulations, 2008.

The aim of this document is to provide guidance for and assistance to the providers of insurance and related financial services within Malta who are bound by the Access to Goods and Services and their Supply (Equal Treatment) Regulations. Consequently in this respect, this guidance applies to insurance companies carrying on the business of insurance and to companies carrying on the business of other related financial services in Malta and to those European undertakings who have exercised their rights to passport their activities into Malta.

The Equality for Men and Women Act, Chapter 456 of the Laws of Malta, already prohibits insurance companies and other related financial service providers from discriminating against any person in the grant of any facility or insurance of one's business.

Consequent to this, Legal Notice 181 of 2008 laid down a framework for combating discrimination based on gender in the access to and supply of goods and services and prohibits any form of discrimination in this sphere. For this purpose, it also addresses providers of insurances and related financial services and provides for a notification procedure to ensure that the use of sex as a factor in the calculation of premiums and benefits is one within the law. In this respect, the use of sex as a factor in the calculation of premiums and benefits which results in the premiums and benefits relating to an individual may only be justified **where the use of sex is a determining factor in the assessment of risk, and only if the resulting differences in the premiums and benefits relating to an individual are proportionate, and where this assessment is based on relevant and accurate actuarial statistical data.**

The 2008 Regulations establish an annual notification procedure with which providers of insurance and related financial services that use such a determining factor are obliged to comply. On a yearly basis NCPE is to receive from such service providers three types of relevant information, these being: (a) the product or service in relation to which the notification is being filed and consequently the product or service in relation to which such service provider uses the factor of sex as a determining factor; (b) a rationale as to why the use of sex is a determining factor; and (c) the actuarial statistical data on which this rationale is based.

This guidance is therefore aimed at guiding service providers on how such information should be compiled, published and updated within the annual notification procedure.

Scope of Application

This guidance is relevant to that product or service in relation to which service providers use the factor of sex as a determining factor in the determination of risk assessment and also in relation to the establishment of premiums and benefits. In relation to the business of insurance this includes life assurances, critical illness insurances, annuities, permanent health insurances, private medical insurances, motor insurances and travel insurances and similar policies involving the assessment of risk where gender is a determining factor in the calculation of premiums and benefits.

The regulations set out in Legal Notice 181 of 2008 do not apply to matters of employment or occupation, nor do they prejudice the freedom of an individual to choose a contractual partner. Hence, this guidance does not apply to discrimination in the field of employment, but to insurance and pensions that are private, voluntary and separate from the employment relationship and which are provided by service providers licenced in Malta or whose services are passported to Malta.

Within the framework of the obligation imposed on service providers, the use of sex as a determining factor in the assessment of risk, premiums and benefits is to be based on that relevant actuarial statistical data which is compiled, published, regularly updated and notified to NCPE. This applies to all contracts as of 1st August 2008.

Purpose of Guidance

In line with the *Access to Goods and Services and their Supply (Equal Treatment) Regulations*, this guidance is aimed at ensuring equal treatment in relation to gender with regards to insurance and related financial services. In particular, the purpose of this guidance is to:

- Ensure that differential treatment in insurance and related financial services is justified;
- Certify that the data used in assessing risk for insurance purposes is relevant and accurate;
- Encourage the use of actuarial factors related to gender in the provision of insurance and other related financial services;
- Describe the minimum content to be included in the publication of data;
- Assist providers of insurance services when compiling and publishing data on an annual basis;
- Make sure that the use of gender as a factor in assessing risk does not result in differences in individuals' premiums and benefits;
- Ban pregnancy and maternity discrimination;
- Preclude release of price sensitive information or any information that may facilitate competition of other insurance providers in the market.

Insurers use a variety of data to set premiums and benefits, but gender may at times be an important factor that determines individual risk pricing. When insurance providers offer different premiums or benefits to men and women, they are obliged to compile and publish data related to gender on which the assessment of risk is based and also to comply with the notification procedure.

The Notification Procedure

Legal Notice 181 of 2008 obliges service providers to comply with an annual notification procedure.

This notification is to be made in the form of a report and submitted to NCPE for consideration and publication. The report is to include:

- i. Details of the service provider, indicating name, address and incorporation number of the legal entity carrying out such business; and name, address and identity card number/passport number of its contact person for this purpose.
- ii. The product or service in relation to which the notification is being filed, indicating the type or category of the product; the licence under which such product is being offered to the public; a description of the product; a description of the requirements that one is to satisfy in order to qualify for such product; a description of the method or process used in assessing the premium and benefits allocated under such product.
- iii. A rationale as to why the use of sex is a determining factor, indicating the link between the factor of sex and the product; the reasons why the service provider considers the use of sex as a determining factor; and any other relevant considerations and arguments that justify the use of the factor of sex.
- iv. The actuarial and statistical data on which the rationale indicated in (iii) is based which is to indicate evidence to justify continuous differential treatment based on gender. Such data may illustrate gender ratios or recent differences in the incidence of mortality, morbidity or risk of road traffic accidents. Data may be presented in a graph, table or chart classified by gender and age, in order to illustrate gender ratios for insured risks in Malta. Graphs, tables or charts are to be accompanied with relevant explanations, including the source of the data and the period to which it refers. Moreover, data must be referenced with the original source clearly indicated where such data is not originally compiled by the service provider. The source and accuracy of the data must be attested by an authorised officer of the firm providing it. Where data is taken from official

authorities such as the data published by the National Statistics Office, clear reference to its source must be indicated.

- v. Annual notification and the relative data must be submitted to NCPE by not later than the 30th November of each calendar year. The first notification is to cover all relevant products for the preceding twelve (12) calendar months and those products that will be offered in the twelve (12) months thereafter. Every annual notification thereafter is to provide data in relation to the relevant products being offered in the twelve (12) months thereafter.
- vi. Where a product not mentioned in the last annual notification is introduced on the market, the service provider is to present an annual notification for such product not later than thirty (30) days prior to its launch and must present all documentation by not later than six (6) months from the date of such notification.

DATA PUBLICATION OBLIGATIONS

This guidance describes the minimum content and form in which data should be published for each main policy type. Providers of insurance and related financial services can also include additional data that is relevant to their own particular circumstances, or to any innovative policies that provide differential treatment between men and women. Such additional data has to accurately justify this discrimination on the grounds of gender.

Providers of insurance can either publish their data independently, or else collectively on a joint basis with other insurers. Otherwise, data can be published by a third party commissioned by an individual insurer or by two or more insurers on a joint basis.

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

Publication of the relevant data is to be made through any medium, whether printed, recorded or provided on a website. Whatever medium of publication is selected by the service provider, that service provider is obliged to provide a hard copy of the published data upon request. The minimum required data should be provided free of charge to actual and prospective policy holders.

Published data must indicate the rationale as to why the use of sex is a determining factor and show why differential treatment based on gender is to be deemed justified. Insurers may use publicly available material such as Government and other available statistics, published research and material such as proprietary company research, claims and other data. However, if such data does not present a direct correlation with the differential treatment, insurers have to explain the relationship of the published data with their own premiums and benefits.

Published data should be aggregate and comprehensive so as to condense extensive and complex information into data that is intelligible to laymen with the use also of graphs, tables or charts. The aggregation of mainly historic data at a high level is intended to present the evidence that justifies continuing differential treatment based on gender. Moreover, the use of aggregate data precludes release of price sensitive information or any information that might facilitate competition of other insurance providers in the market.

Data relating to the “assessment of risk” should focus on the assessment of claims costs, based on claims frequencies and claims severities, including the future of cost of current claims. It should be gross of reinsurance and net of any excess paid by policyholders. Loadings flowing from expenses, capital and solvency requirements, tax and tax allowances, or acquisition and merger costs are not held to be relevant to the assessment of risk based on actuarial and statistical data relating to differences between men and women. Moreover, as is indicated below, data for some of the products is required to indicate differences based on gender as classified by age bands. For those products which appropriately require data to be classified by age bands, this is to be understood as requiring such data to be classified by age in 5 year age bands or as otherwise indicated by NCPE.

For instance, when insurance providers are rating Motor policies for females on better terms, claims data has to be provided to justify such a differential treatment based on gender. Such data may include: claims costs based on claims frequencies and claims severities, gross of reinsurance and net of any excess paid by policyholders.

Article 5 of the *Access to Goods and Services and their Supply (Equal Treatment) Regulations* entails that gender differences in insurance premiums and benefits have to be proportionate. In other words, there should be a close relationship between the published underlying data and the assessment of risks reflected in premiums and benefits. The term ‘proportionate’ implies that when one considers all the factors affecting risk assessment, factors which are relevant to determining premiums or benefits in an individual case, the factor of sex does carry such a high bearing on the

resultant premium or benefit. Consequently, the differential treatment is proportionate when it is fair and reasonable.

Specific Policies of Insurance

In particular, publication of data in relation to life assurances and annuities may be presented by way of a graph, table or chart illustrating the ratio of male to female mortality rates for insured risks in Malta. The published data must illustrate recent differences in mortality by gender and by age. Different forms of annuity and life assurances may be combined in the published data.

Publication of data on critical illness insurance or permanent health insurance may be presented by way of a graph, table or chart illustrating the ratio of male to female morbidity rates for insured risks in Malta. The published data must illustrate recent differences in morbidity rates by gender and by age. Different forms of critical illness insurances may be combined in the published data.

For private medical insurances, publication of data may be presented by way of a graph, table or chart illustrating the ratio of male to female average claims cost. Also, data should be classified by age. All short term (up to five years) medical insurance products can be combined in the published data.

Publication of data in relation to motor insurances may be presented by way of a graph, table or chart illustrating the ratio of male to female average costs per policy. The published data must illustrate recent differences in the risk of road traffic accidents by gender and by age. Data may aggregate all forms of cover and for all relevant motor vehicles. Such data should indicate the accident years reported.

For travel insurances, publication of data may be presented by way of a graph, table or chart illustrating the differences in the incidence and cost claims rates by gender and by age. Different forms of travel insurances may be aggregated in the published data.

Applicable dates

The Regulations found in Legal Notice 181 of 2008 apply to contracts entered into after 1st August 2008. Accordingly, the data used for assessing risks for premiums or benefits entered into after 1st August 2008 must be published. Similarly, if certain long term contracts (such as life assurances) are reviewed or reset after 1st August 2008, data should be made available if the conditions or terms of such variations constitute entry into a new contract.

In addition, when launching new products on the market, the relevant data that is used to assess risk, or price contracts has to be published. If such new products entail a differential treatment on the grounds of gender, data on risk assessment has to be compiled, published and updated accordingly.

In accordance with L.N. 181 of 2008, providers of insurance have to file an annual notification to the NCPE. Hence, published data has to be updated on a yearly basis.

Bibliography

- Equality for Men and Women Act, Chapter 456 of the Laws of Malta
- Legal Notice 181 of 2008, Access to Goods and Services and their Supply (Equal Treatment) Regulations, 2008.
- Council Directive 2004/113/EC implementing the principle of equal treatment between men and women in the access to goods and services and their supply.
- Guidance on the publication of data associated with the use of gender in the assessment of insurance risks, published by HM Treasury, found at hm-treasury.gov.uk

This guidance is subject to review and update by NCPE who will monitor its operation.