

ECJ Gender Ruling Update August 2011

GOVERNMENT CONFIRMS ECJ GENDER RULING WILL APPLY ONLY TO NEW CONTRACTS ENTERED INTO AFTER 21 DECEMBER 2012

Background

On 1 March 2011 the European Court of Justice (ECJ) issued its judgment in the *Test-Achats* case, ruling that gender based pricing in contracts of insurance is a contravention of EU law and that from 21 December 2012 insurers will be obliged to apply unisex premiums and benefits. Following the judgment, it was unclear whether the ruling would affect policies taken out prior to 21 December 2012.

UK Government issues written statement on ECJ ruling

In a move welcomed by industry groups, on 30 June 2011 Mark Hoban, Financial Secretary to the Treasury, issued a written statement confirming that the Government considers the judgment applies only to new contracts of insurance entered into on or after 21 December 2012. Contracts concluded prior to 21 December 2012 which use gender as a pricing factor may continue unchanged (although caution should be exercised as regards contracts containing an automatic right to renewal; such contracts may be treated as "new" contracts upon renewal).

The statement confirmed that the Government intends to amend Schedule 3 of the Equality Act 2010 to bring it in line with the judgment and will be issuing a consultation paper on the proposed amendments this Autumn.

The EU position

The Government is working with the European Commission and other Member State governments to ensure a consistent approach but, according to Hoban, "*the early indications are that our interpretation is shared across Europe*". The

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Commission presently has no plans to amend the Gender Directive to give effect to the ECJ judgment but Hoban confirms that the Government is in favour of an amendment and will "*continue to work with other member states to press the Commission to propose such an amendment at the earliest opportunity*". This is an approach supported by the European Insurance and Reinsurance Federation (CEA), who issued a position paper on the ECJ ruling on 28 July 2011.

In the meantime, the Commission has indicated that it will issue guidance on the interpretation of the judgment and the Government is pressing for this guidance to be released as soon as possible.

Government "disappointed" at ECJ ruling

Mr Hoban also took the opportunity to voice the Government's disappointment at the ECJ ruling, saying that it went "*against the grain of the common sense approach to equality which the UK Government want to see. The Government believe that nobody should be treated unfairly because of their gender, but that financial services providers should be allowed to make sensible decisions based on sound analysis of relevant risk factors.*" To this end, Mr Hoban has indicated that the Government will be lobbying the Commission and Parliament to prevent a future ban on age as an underwriting factor, should a challenge similar to the *Test-Achats* case be mounted as regards age as a pricing factor.

FURTHER INFORMATION

This note contains a short overview of a recent development in insurance and it is not intended to be a fully comprehensive report on the development. It is written as a general guide only and should not be relied upon as a substitute for specific legal advice. Its application to specific circumstances will depend on the particular facts. The content of this note is current as at the date of publication. If you would like to discuss any issue arising from this note please contact the person with whom you usually deal or one of the contacts listed below.



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