

## The implementation of a policy of gender-neutral drafting

*What is gender-neutral drafting?*

- 1 The first question is what changes to existing drafting practices does a policy of gender-neutral drafting involve. There are two.
- 2 The first is abandoning the existing practice (which relies in part on section 6 of the Interpretation Act 1978) by which a gender-specific pronoun, usually the male pronoun, is used to refer to a person who may be either male or female or, indeed, neuter. The current practice is to use “he” instead of “he or she” or “he, she or it”, and so on with “him” and “his”.
- 3 The second involves the avoidance of nouns that take a form that appears to assume that a man rather than a woman will hold a particular office, do a particular job or perform a particular role: “chairman” is the most obvious example.

*Pronouns*

- 4 So far as pronouns are concerned, experience at the Tax Law Rewrite Project and elsewhere has shown that the most usual and effective technique for avoiding male-only pronouns in gender-neutral contexts is to repeat the noun.
- 5 This is usually less cumbersome than accumulating pronouns (particularly where three are required). It also avoids controversy about the priority that is given to the male pronoun, or indeed to the female pronoun, as well as avoiding the use of words made unnecessary by the Interpretation Act. The use in legislation of words that are technically unnecessary invariably leads to confusion.
- 6 The adverse effects of the repetition of a noun can sometimes be mitigated by the use of a letter as a label for a noun that would otherwise appear repeatedly: “If a person (“C”) makes a claim under this section, C is entitled...”.
- 7 Another technique for avoiding male pronouns in gender-neutral contexts is to turn sentences in the active voice into the passive voice or to make more use of plural nouns. Shorter sentences also help.
- 8 There are other techniques that may be possible, but drafters will need to reach a view about these in the course of the practical implementation of the new policy. For example, the use of “they” as a gender-neutral pronoun to refer to a singular noun that implies an element of plurality (eg “anyone” or “a person”) has respectable, literary precedents but is nevertheless controversial and will probably be avoided, not least because it may make it more difficult in future to rely on the number of a pronoun for clearly identifying what it is referring to.

*Gender-specific nouns*

- 9 Some difficult questions arise about which nouns should be regarded as gender-specific

and which should be regarded as gender-neutral.

- 10 Our view is that only words ending in “man” need to be avoided to secure gender-neutral drafting. Drafters will need to form a view on what constitutes an acceptable gender-neutral alternative for such a word (for example “drafter” or “counsel” for “draftsman”). The use of “person” (instead of “man”) as a suffix may be controversial and so may prove unattractive to drafters.
- 11 I expect the Office of the Parliamentary Counsel to arrive at a consensus on the best alternatives for the most common “man” words: “chairman” and “ombudsman” seem the most obvious. (Some, but not all, think the latter can be disregarded for etymological reasons). A number of suggestions for chairman have been made apart from “chair”: “convenor”, “leading member”, “principal member”, “president”. However finding a consensus may take time and, in the meantime, there are likely to be various different words used. The word “commissioner” is an available alternative for “ombudsman”.
- 12 If no gender-neutral alternative can be found for a word, the only other available technique is some circumlocution (“the person with the function of chairing the Board”). Using “chair” as a designated label for that person may be preferable to using “chair” as the description of the office in its own right.
- 13 Words for offices, functions and jobs which do not end in “man” which might be regarded as gender-specific because of the existence of alternative female forms should nevertheless be regarded as gender-neutral. I believe this is commonly regarded as the preferred usage, even amongst the strongest advocates of equality between the sexes in the use of language. So eg “testator”, “manager” and “actor” would all be regarded as gender-neutral, despite the existence of “testatrix”, “manageress” and “actress”.

#### *Exceptions*

- 14 It will be necessary for there to be some flexibility in any rule requiring the use of gender-neutral drafting techniques. The rule at the Tax Law Rewrite Project is to achieve gender-neutral drafting so far as it is practicable to do so at no more than a “reasonable cost to brevity and intelligibility”. A similar rule will be applied to all primary legislation. It has to be understood that the qualification could not be read as a justification for retaining the status quo. But, in practice, the existence of this exception has not prevented the total abandonment at the Tax Law Rewrite Project of the use of male pronouns in gender-neutral contexts.
- 15 The main use for the exception is likely to be in amendments of existing Acts. Although it may often be possible to use gender-neutral techniques to frame textual amendments of provisions that were originally framed in gender-specific terms, there are clearly going to be cases in which that will not be possible. Sometimes, it would be necessary to rewrite a provision from scratch in order to make a very minor amendment in gender-neutral terms; and that could create handling problems, as well as tending to obscure the real purpose of the amendments.
- 16 Similarly, references in a new Bill to a “chairman” created by a pre-2007 Act would have to refer to that office by the name that it was given in the earlier Act.
- 17 The existing legislation on child support is drafted entirely on the assumption that the

caring parent is the mother (and therefore female) and that the absent parent is the father (and therefore male). When amending that legislation it would be impracticable to change this assumption without a substantial rewrite, which might end up being significantly less clear.

- 18 There are also going to be some Acts where gender-specific drafting is going to remain appropriate (eg in Acts about marriage or divorce), although difficult questions may arise eg where provisions about marriage have been applied to civil partnerships.
- 19 Drafters will continue to refer in gender-specific terms to the monarch according to the gender of the current monarch.
- 20 A similar practice however should not be followed in relation to the Secretary of State, because references to eg “the Secretary of State” are not in law references to any particular Secretary of State; they are references to one of Her Majesty’s principal Secretaries of State. Different considerations might apply where the current holder of a specified Ministerial Office is clearly identifiable (eg the Prime Minister).
- 21 References to the Secretary of State give rise to one of the more difficult problems for gender-neutral drafting. A repetition of the four word title can be very cumbersome. It is not practicable to say in advance what will prove the best way of dealing with this, and drafters will need to experiment in practice with different solutions.
- 22 It is likely to become more common for legislation to be drafted with a shorter label attached to the Secretary of State: eg “In this Act ‘the Minister’ means the Secretary of State”. Also devolution now sometimes means that a reference to the Secretary of State has to become a reference to “the appropriate national authority”, which is then defined, in relation to English, Welsh and Scottish contexts, to mean the Secretary of State, the Welsh Ministers and the Scottish Ministers, respectively. This has the added advantage that “the appropriate national authority” attracts the gender-neutral “it” or “they”, rather than “he”. However, care will be needed with this technique where only the Secretary of State is involved and an implication that there could be further devolution of a particular function will be controversial.
- 23 These examples all illustrate that individual judgements are going to have to be made by drafters in different contexts.

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