



FACULTY OFFICE

GENDER-NEUTRAL LANGUAGE

Following the making of the new Notaries Practice Rules 2019, the Faculty Office was made aware of concerns raised by some notaries that the language used in the rules was not gender neutral. The use of the masculine gender as a default has been understood by some to reinforce historic gender stereotypes. Whilst the Interpretation Act 1978 (which is expressly incorporated into the Rules) provides that "words importing the masculine gender include the feminine", that Act is itself arguably the product of a 'former age' in terms of its drafting and over 40 years old.

The Faculty Office is committed to promoting equality and diversity within the notarial profession and believes that such work should start at home. The Faculty Office considers that it is possible to draft in a gender-neutral way which avoids association with gender stereotypes while not sacrificing grammatical accuracy.

In listening to and seeking to address the expressed concerns set out above, the Faculty Office is committing itself to ensuring all of its publications are drafted in gender neutral language. Whilst making the proposed amendments to the Notaries (Conduct & Discipline) Rules 2015 (as amended) to facilitate remote hearings of the Court of Faculties which are currently out for consultation, the Faculty Office is taking the opportunity to make further amendments to the Rules to ensure that they are drafted in a gender-neutral way. In so doing it has had regard to a [Guide to Gender Neutral Drafting](#) based on guidance by the Office of the Parliamentary Counsel. See also the following easy to read [article](#) produced within the Civil Service.

Under the Legal Services Act 2007 amendments to rules (however minor) are regarded as changes to regulatory arrangements and require the approval of the Legal Services Board even where the change does not affect the operation of the rule (as would be the case with gender-neutralisation).

In order to take forward our commitment, there are three possible routes:

- Perhaps the simplest option would be to ensure that the commitment is embedded from this point forward and to ensure that, as and when changes are made to any part of our suite of Rules, the opportunity is taken to ensure that the rule is re-drafted using gender-neutral language alongside the substantive proposed changes. However, with 14 current sets of Rules, some of which have not required amendment for many years already, it is likely to take some time before our commitment to gender-neutrality in all our publications is fully realised.
- We could prepare a new Rule, the Notaries (Gender-Neutral Language) Rules 2020, which might simply say that, with effect from the implementation date, the Rules listed in the Schedule hereto shall be amended and read, where the context so permits, to remove all gender-specific language (he and/or she) and replace it with gender-neutral language (they/their). This would require formal consultation and an application to the LSB for formal approval.

- The final option would be to apply to the LSB for an exemption direction which, given how minor the effect of the changes are, we have already received an informal view that one would be likely to be forthcoming. This would require the production of a track-changed version of the rules and a brief assessment against the [Significance Impact and Risk Framework](#). Given what is proposed this would be relatively straightforward

It should be noted that it may be necessary to retain certain words or phrases which may infer gender-specificity. For example, notwithstanding that the 27th Master of the Court of Faculties is Morag Ellis QC, she will retain the title 'Master' and where the context so requires any Rules drafted during her tenure will use the female pronoun when referring to the Master.

NDT
Faculty Office, September 2020