

# GENDERNEUTRALE FORMULERING VAN WETGEVING



OPEN UP NEW HORIZONS.

**HAN\_** UNIVERSITY  
OF APPLIED SCIENCES

# SUMMARY ENGLISH

## Introduction

### Reason

Article 3.8 of the Drafting Instructions for Legislation (*Aanwijzing voor regelgeving*) requires the use of gender-neutral personal nouns where possible when drafting laws and regulations. This should be taken into account when drafting new laws. As far as current laws are concerned, an inventory of the Civil Code in 2022 revealed that it still regularly contains terms with a masculine connotation. The question now is whether the same applies to the other legal codes under the Ministry of Justice and Security, and whether they can be made more gender neutral. Once this is clear, the State Secretary for Legal Protection can decide what, if any, follow-up steps should be taken to make the legislation more gender neutral.

### Social relevance

The desire to achieve greater gender neutrality in legislation and other legal texts is playing out both at home and abroad and is part of a wider (international) social development around gender identity, diversity and inclusion. This has its origins in the emancipation movement of the 1970s, where interest in language and sexism emerged. A stream of publications emerged exploring the possibilities of making women more visible in language in order to achieve greater equality. The discussion then revolved around the question: should women be made more visible by structurally using both the male and female forms of a job title (differentiation), or do gender-neutral forms help achieve more equality (neutralization)? As the general discussion has now expanded beyond gender inequality to include inclusion and gender, the current approach is now neutralization.

## Research questions

### Main question

To what extent is it possible to make legislation gender neutral?

### Subquestions

1. When are terms (potentially) gender specific?
2. Which gender-specific terms appear in the main legal codes of the Ministry of Justice and Security?
3. How common are these gender-specific terms?
4. What are the gender-neutral alternatives to the gender-specific terms found?
5. To what extent do these alternatives risk changing the legal meaning of legal provisions?

## When are terms gender specific, or potentially gender specific?

### Method

In order to determine whether legislation can be made gender neutral, it is important to understand what gender-specific language means. Gender-neutral language means the absence of terms that imply that the male gender is the norm. Exactly what these terms are, however, varies from language to language and depends on the grammatical structure of a language, as well as on stereotyping and culturally embedded meanings. Nevertheless, similarities can be found when looking at languages that are similar in terms of their grammatical system. Therefore, a literature review of a wide range of linguistic research was conducted to determine what type of language Dutch belongs to and what this means for how terms are interpreted: as gender-specific or neutral. From there, gender-specific language was operationalized by providing a workable definition of what gender specific, or potentially gender-specific terms are.

### Results

Due to language changes, Dutch is increasingly becoming a natural-gender language like English. This means, among other things, that the grammatical gender of a personal noun is becoming less important, because it is not always decisive for the choice of pronoun. After all, the masculine word *leraar* (teacher) can be referred to with the singular and feminine pronoun *she* if it is known that this concerns a woman. If the gender is not known, then the masculine pronouns apply. These refer not only to men, but potentially to women as well. This also applies to the word (personal noun) *leraar* (teacher) itself: it can also refer to women. These personal nouns and pronouns are called masculine generics. Whether language users actually experience these masculine generics as referring to all genders cannot be determined purely objectively. This is because it depends on factors such as context, usage, stereotyping and societal developments and at the same time is not fixed under the influence of these factors. Research shows that generic masculine words (both personal nouns and pronouns) are often given a masculine content for the language user anyway. However, this masculine content or interpretation may change over time, influenced by changes in society.

Since it is impossible to determine unambiguously for each individual word whether it is gender specific or not, a broad operationalization of gender-specific language use was chosen. Gender-specific language use involves the use of gender-specific terms. Gender-specific terms then involve personal nouns and pronouns with a possibly specifically masculine interpretation, although for the sake of completeness we also looked at words with a feminine interpretation. From this definition, it is then possible to determine whether the terms found in the legal codes are gender specific. Replacing the gender-specific terms with non-gender-specific alternatives then leads to more gender-neutral wording of the legislation.

## What gender-specific terms appear in the main legal codes of the Ministry of Justice and Security, and how frequently do they appear?

### Method

Automatic and manual techniques were used to search the legal codes for terms that fit the formulated definition. This resulted in (a) a final glossary of 451 personal nouns that were determined to be gender specific or not and (b) an estimate, made via a computer model, of the number of times male (*he, his, him*) and female (*she, her*) pronouns occur to refer to the personal nouns found in the glossary. This resulted in (a) a final glossary of 451 personal nouns that were determined to be gender-specific or not and (b) an estimate, made via a computer model, of the number of times male (*he, his, him*) and female (*she, her*) pronouns occur to refer to the personal nouns found in the glossary.

### Results

#### *Personal nouns*

Of the 451 personal nouns found, 94 personal nouns fall into the "not gender specific" category. These are personal nouns such as *gedragkundige* (behaviorist), *getuige* (witness) and *gedagvaarde* (summoned). The largest category are the personal nouns that fall into the "possibly gender specific" category. This concerns 334 of the 451 personal nouns found and includes personal nouns such as *advocaat* (lawyer), *arts* (doctor), *rechter* (judge), *eiser* (plaintiff), *deelnemer* (participant) or *vreemdeling* (foreigner). Whether they are also perceived as gender-specific depends on usage, context, stereotyping and social developments. Finally, there is the category "strongly gender specific". It consists of 23 out of 451 personal nouns. Of these 23 personal nouns, 18 explicitly refer to the gender of the person in question (*moeder* (mother), *vader* (father), *halfbroer* (half-brother)). According to the delineation of this study, these personal nouns were further disregarded because the reference to gender has a function within the regulations in which they occur. The remaining 5 personal nouns from the category 'strongly gender specific' have the masculine suffix *-man* (man). Similar personal nouns also occur within the 'possibly gender specific' category. These are personal nouns that end with the masculine suffixes *heer* (lord), *meester* (master) and *vader* (father). It is precisely because of these suffixes that these personal nouns are given a gender-specific interpretation.

After an expansion of the search for personal nouns with plural male suffixes, a list of gender-specific personal nouns (gender-specific terms list) was established. A total of 21 personal nouns are involved: the job titles *bouwmeester* (master builder), *bouwmeesters* (master builders), *burgemeester* (mayor), *geneesheren* (physicians), *heelmeeesters* (healers), *koopman* (merchant), *krijgsman* (warrior), *leermeesters* (apprentice trainers), *muntheester* (mint master), *ombudsman* (ombudsman), *ombudsmannen* (ombudsmen), *penningmeester* (treasurer), *raadsheer* (justice), *raadsheer-commissaris* (examining justice), *raadsheren* (justices), *raadsmen* (counsellor), *scheidsmannen* (arbitrators), *stuurman* (navigator), *veilingmeester* (auctioneer), *voorman* (foreman) and the role name *huisvader* (reasonable/diligent person). They occur a total of 619 times in the legal codes.



## *Pronouns*

The 451 personal nouns found, when referred to, are almost exclusively referred to with masculine generic pronouns. Only the few female personal nouns found in the legal codes, such as *moeder* (mother), *vrouw* (wife) and *werkneemster* (female employee), are referred to using female pronouns. Because of the masculine bias that masculine generic pronouns have, this gives the legal codes a strongly masculine interpretation.

## **What are the gender-neutral alternatives to the gender-specific terms found?**

### **Method**

Desk research was conducted to determine what alternatives there are to the gender-specific terms (personal nouns and pronouns) found in the legal codes. Van Dale Online and Google searches were used to determine the existence of existing alternatives. These alternatives were then applied to the legal codes to determine whether these existing alternatives were semantic substitutes for the gender-specific term. Where there were no existing alternatives, or where there was doubt, literature research was conducted to determine how gender-neutral alternatives could be created. This knowledge was applied to the gender-specific terms in question to determine which of the possibilities mentioned in the literature work best (are most productive) for the terms in the legal codes. Whether (some of) the newly formed gender-neutral alternatives for personal nouns can work well in the Dutch language was then tested by means of a questionnaire based on Alan Metcalf's FUDGE test. This test can be used to predict whether a new word will be successful.

### **Results**

#### *Personal nouns*

For the vast majority of the 21 gender-specific personal nouns found in the list of gender-specific terms, there is a directly applicable and existing alternative. While most of these alternatives themselves fall into the category of "possibly gender specific" and thus cannot be directly classified as gender neutral, they are more gender neutral than the original personal noun. For example, *geneesheer* (male physician) can be replaced by *arts* (doctor), *voorman* (foreman) by *voorganger* (supervisor) and *koopman* (male merchant) by *handelaar* (merchant). For other personal nouns, the legal provision itself needs to be looked at specifically when replacing with an alternative. For example, a *raadsheer* (justice) is always replaceable by *advocaat* (lawyer) in the legal codes, except in the *Burgerlijk Wetboek* (Civil Code), where this personal noun occurs 7 times (legal codes from the Caribbean BES islands included).

For a number of personal nouns for which there is no existing alternative or there is doubt about the existing alternative(s), a new gender-neutral alternative has been created. These are: *bouwmeester(s)* (master builder(s)), *burgemeester* (mayor), *muntmeester* (mint master), *veilingmeester* (auctioneer), *ombudsman* (ombudsman), *raadsheer* (justice), *raadsheren* (justices) and *raadsheer-commissaris* (examining justice). Especially for the personal nouns ending in *-meester*

(master), replacing this suffix with *-hoofd* (-head) seems to be productive. Whether this suffix also has a good survival rate was tested in a FUDGE questionnaire using the word *burgerhoofd* (citizen-head) instead of *burgemeester* (mayor). For *raadsheer* (justice), the alternative *hofrechter* (court judge) was tested and *ombuds* for *ombudsman* (ombudsman). In addition, a gender-neutral alternative of a personal noun from the category "possibly gender specific" was tested. This is the personal noun *schuldenaar* (debtor) with *schuldhebbende* (debtor) as an alternative. The questionnaire survey shows that the newly formed gender-neutral alternatives tested have a low (*ombuds* and *burgerhoofd*) to medium (*schuldhebbende* and *hofrechter*) survival rate. For those personal nouns for which there is an existing alternative, this may support the decision to include this existing alternative as a gender-neutral alternative in the legal codes rather than choosing a newly formed gender-neutral alternative.

For the gender-specific personal nouns whose alternatives have been tested (*burgemeester*, *raadsheer* and *ombudsman*), this means that the proposed alternative should not be applied without question. For *ombudsman*, there are already two alternatives to choose from: *ombudspersoon* (ombudsperson) and *ombudsfunctionaris* (ombuds officer). The respondents themselves most often mention *ombudspersoon* (ombudsperson) as a possible alternative. For *burgemeester* (mayor), words with *gemeente* (municipality) in them are possible alternatives, according to the alternatives given by respondents for the personal noun *burgemeester* (mayor). In terms of likelihood of survival, the word *hofrechter* (court judge) is a possible alternative for *raadsheer* (councilor), also given the similar alternatives that respondents themselves mention and the fact that no preference for a particular alternative emerges. When considering the substitution of personal nouns within the category "possibly gender specific", a form with *-hebbende* (-having) is considered whenever possible, as it has the highest survival rate of all words tested.

### *Pronouns*

Male and female pronouns can be replaced by alternating the existing gender-neutral alternatives *die* (who), *diens* (whose) *diegene* (the one) and repeating the personal noun to which the pronoun refers. Another option is to use plural pronouns (in combination with plural personal nouns) where this is possible and does not create problems for the legal meaning of the law.

## How do these alternatives risk changing the legal meaning of the legal provisions?

### Method

The question of whether the legal meaning of the provision changes when gender-specific terms are replaced by (more) gender-neutral alternatives was the subject of an expert meeting. Participants from both the Netherlands and the BES islands were invited to the expert meeting because of their expertise in the field of law, language or both, and because of a known affinity with the subject. Attention was paid to whether the various subfields of law were adequately represented. Where possible, attention was also paid to ensuring that not only proponents but also those who might be more critical of gender-neutral formulations were represented. The group of eventually eleven participants included, among others, lawyers working in the legislative field, professors, judges, lawyers and directors, and a linguist.

### Results

#### *Personal nouns*

The expert meeting shows that the legal risks of changing the proposed (possibly) gender-specific personal nouns for the meaning of the law are generally low. Only the replacement of possibly gender-specific personal nouns such as *eigenaar* (owner), *bezitter* (possessor) and *houder* (holder) is likely to cause problems due to the clear and precise definitions of ownership, possession and holding. For the gender-specific personal noun *raadsheer* (justice) for which there did not seem to be a good existing alternative, the experts see the personal noun *rechter* (judge) as a good gender-neutral alternative. Again, no legal risks are expected. According to the experts, the personal noun *raadsman* (counsellor), which is often found in the legal codes, can easily be replaced by *advocaat* (attorney). Replacing the gender-specific personal noun *ombudsman* (ombudsman) does require a constitutional amendment, but this is not seen as a legal risk.

#### *Pronouns*

With the suggested pronouns *die* (who), *diens* (whose) *diegene* (the one) and the repetition of the personal noun to which the pronoun refers, the experts do not see any legal risks. Also, the definite article *de* or *het* (the) instead of *diens* (whose) often proves useful. Even when using plural personal nouns and corresponding plural pronouns, the legal risk is considered low. Since there is no ready-made solution, the replacement of pronouns will always have to be done at the sentence level.

### Conclusion

Since it is not possible to objectively determine whether many of the terms found are gender-specific or not, and since this is also subject to change, it is not (ever) possible to make legal texts 100% gender neutral. However, they can be much more gender neutral than they are now. This can be done partly by replacing personal nouns with masculine suffixes with gender-neutral (or more gender-neutral) alternatives, and partly by replacing masculine generic pronouns. The legal risks of changing these gender-specific terms for the meaning of the law are generally low.

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