**Questionnaire**

**Protection against violence and discrimination based on sexual orientation and gender identity**

**Ireland’s Response**

**March 2019**

**1. What are the current efforts by States to increase their knowledge of the LGBT population? Specifically, are questions about sexual orientation and gender identity included in government surveys (e.g. the census, national health surveys, income and living condition surveys, or other surveys funded or mandated by the State), administrative records (e.g. birth certificates/birth registries, identity Cards, school records, professional licenses, social security and public benefit records, and other government documents)?**

**Government Surveys**

1. **LGBTI+ National Youth Strategy**

Ireland launched its LGBTI+ Natioanal Youth Strategy in June 2018. In advance of the publication of the strategy, almost 4000 young people from across Ireland were consulted on the development of a LGBTI+ National Youth Strategy. 3882 young people from across Ireland completed an online survey and 172 young people attended one of seven consultation events, representing a cross-section of young people, including those who identified as a member of the LGBTI+ community, and those who did not.

They were asked

1. What is being positive about being a young LGBTI+ person in Ireland today?
2. What issues are faced by young LGBTI+ people in Ireland today?
3. What changes would improve the lives of young LGBTI+ people?

Goal 3 of the LGBTI+ National Youth Strategy, aims to develop the research and data environment to better understand the lives of LGBTI+ young people including the following actions:

1. Conduct a commissioned landscape analysis of existing research and data as relevant to Irish LGBTI+ youth. Use this information to complete an LGBTI+ research needs analysis based on the research gaps identified.
2. Based on identified research and data gaps, develop and implement research to meet the identified gaps.
3. Commission a review of international and Irish best practice study on appropriate language and ways to ask about gender identity and sexual orientation to inform the development of best practice instrumentation for inclusion in surveys and/or Census. Participate in piloting of questions with CSO and other research bodies, as relevant.
4. Develop research into the factors that support positive mental health for LGBTI+ young people and ascertain how these positive factors can be replicated.
5. **LGBTI Inclusion Strategy**

The Department of Justice & Equality is in the process of developing a National Strategy to improve the lives of the LGBTI+ citizens of Ireland. The overall aim of this strategy is to target discrimination, promote inclusion, and improve quality of life and wellbeing for LGBTI+ people.

Preliminary consultation has taken place with a range of stakeholders including LGBTI+ representative and community bodies, mental and sexual health practitioners, and legal experts.

The Department also facilitated a series of thematic consultation sessions with key experts and researchers to support the development of the Strategy, which concluded in February 2019 along with a written submissions process.

Targeted consultation with members of the LGBTI+ community suffering multiple discrimination and/or marginalisation also took place, with specific workshops with the Trans/Intersex community, LGBTI+ Travellers, LGBTI+ migrants and asylum seekers, and with the LGBTI+ Deaf Community.

Drafting of the Strategy will be supported by a consultative committee comprising the main LGBTI+ NGOs and advocacy groups. It is envisaged that the Strategy will be finalised by April/May 2019.

1. **Health surveys**

The annual Healthy Ireland Survey gives an up-to-date picture of the health of the nation, which is being used to fulfil diverse international reporting obligations and to inform policy development and implementation. Its purpose is to provide a robust and credible baseline set of data on a wide range of population health behaviours which have significant impact on individual health outcomes. It is not targeted towards any particular subgroup of the population.

Approximately 7,500 people aged 15 and over, living in locations across Ireland and representative of the general population, are surveyed annually by personal interview. Respondents are randomly sampled from electoral division address lists each year; participation is voluntary and requires informed consent. Reports of the first four survey waves; 2015-2018 inclusive, have been published.

The Survey reports on many lifestyle behaviours, health service utilisation patterns and chronic disease incidence. A module on Sexual Health was included in each of the 2015-2017 Surveys. While this module was designed as a survey of the sexual health and behaviours of the entire population, data has been collated with regard to the gender of the respondent and the gender of the most recent sexual partner, from which the LGB status of the respondent (or otherwise) can be inferred. The most recent Survey to include this module (HI Survey 2017) reported that 4% of men most recently had intercourse with another man; the equivalent figure for women was 5%.

Two large scale Surveys have been undertaken with men who have sex with men (MSM), the MISI (MSM Internet Survey Ireland), 2015 and the European MSM Internet Survey (EMIS) in 2017. Both Surveys include questions regarding sexual orientation and gender identity.

Specifically, the MISI survey asks participants to:

A. State whether they identify as a man/transman or woman/transwoman

B. Identify who they are sexually attracted to, with the ability to choose one of the following: only to men, mostly to men and sometimes to women, both to men and women equally, mostly to women but sometimes to men, and only to women.

C. To state which of the following best describes themselves: gay or homosexual, bisexual, straight or heterosexual, any other term, and I don’t usually use a term.

Specifically, the EMIS survey asks participants to:

A. State their current gender identity, choosing from the following options: man, trans man, woman, trans woman, and non-binary gender.

B. State what sex they were assigned at birth, with options including male, female, and decline to state.

C. Identify who they are sexually attracted to, including: men, women, non-binary people, not anyone.

D. Identify which of the following term best describes them from the following list: gay or homosexual, bisexual, straight or heterosexual, any other term, and “I don’t use a term”.

1. **Census of Population Questionnaire**

The Central Statistics Office (CSO) recently held its public consultation on the content for the 2021 Census of Population questionnaire. As part of this process, the CSO established a Census Advisory Group (CAG) comprising data users and subject matter experts, to make recommendations on potential topics and questions. During the engagement, the CAG considered the potential inclusion of a new question on gender identity and explored the challenges of framing a question on this topic. The Census is a self completed questionnaire. It is difficult to create a question that captures gender identity in a simple question format for a self completed questionnaire. Some members of the public may not be familiar with the concept of gender identity and may be confused as the Census form also includes a question on their biological sex.

The CAG recommended that the CSO should use its interviewer supported household surveys to trial questions on gender identity, prior to possible future inclusion of questions on this topic in the 5 five-yearly Census of Population. The CSO has commenced this process and has included questions on gender identity as part of the General Household Survey in the first quarter of 2019, which is currently in the field. A question on sexual orientation has also been included in the General Household Survey in Q1 2019. These questions were developed after consultation with users and subject matter experts. The data collection model is CAPI based and the new questions on gender identity and sexual orientation are part of a self completion block, that the respondents can complete themselves. owing to the sensitive and private nature of these new questions.

The CSO will evaluate the information collected in the survey to assess whether it will be possible to compile high quality results from these new questions. Findings from the survey will be communicated to the stakeholder groups as part of ongoing engagement. The field work will also ascertain the level of familiarity of the public with the concept. As part of this ongoing development phase, the CSO plans further engagement with the groups who made submissions on gender identity during the Census consultation.

Questions on gender identity and sexual orientation will not be included in Census 2021 but the experience learned from testing questions on smaller surveys will allow the CSO to progress in future Censuses. Writing census questions is complex and demands a great deal of expertise and testing to ensure the answers provide meaningful, high-quality data that can be used to inform decisions. Poorly worded Census questions can be misinterpreted or cause confusion for people answering the form which in turn can lead to low quality data.

The CSO are also part of an inter-Departmental Group tasked with implementation of the LGBTI+ National Youth Strategy, published in June 2018.

1. **National Equality Survey**

While no official statistics are collated on self-identification concerning the number of homosexuals, bisexuals, trans, and intersex persons in Ireland, the CSO periodically carries out a ‘National Equality Survey’ i.e. a nationally representative (of people 18 and over) sample survey measuring experience of discrimination across the employment and service domains covered by Ireland’s equality legislation. The CSO has proposed conducting a Quarter 1 2019 Equality Module Questionnaire to include questions on Gender Identity and Sexual Orientation. Consequently, a pilot testing (both cognitive and field) on the questions was scheduled to take place in the autumn of 2018.

To date, this survey was carried out in 2004, 2010, and 2014. Respondents who report experiencing discrimination are asked to identify the ground of discrimination from the nine grounds protected in Irish legislation, one of which is sexual orientation. Thus, some discrimination data on sexual orientation is generated in this way. Gender identity is not a protected ground in Irish legislation (although transsexual persons derive some protection under the gender ground, arising from case law of the CJEU and its application in Ireland).

However, neither sexual orientation nor gender identity have to date been collected as population classificatory variables in the National Equality Survey– which means one cannot generate data for the discrimination experience of these groups – in the way that one can for other groups such as disabled people and people of minority ethnicity.

It is expected that these data will be collected in the 2019 survey which should therefore provide important new information on discrimination on these grounds.

While the Civil Partnership Act and the Marriage Equality referendum provided new data on gay and lesbian couples in Census 2016, there is still no official data on transgender or non-binary people.

1. **Civil Society**

Two 2016 reports carried out by civil society organisations; ‘Burning Issues 2’ and ‘The LGBTIreland Report’ included surveys that were responded to by 2,612 and 2,644 LGBTI persons respectively. ‘Burning Issues 2’ was a national consultation carried out by the National LGBT Federation in 2016. It followed the first burning issues survey in 2009 which identified marriage equality and equality in the workplace as prominent issues. The top priority identified in Burning Issues 2 was ending sexuality and gender oppression.

The LGBTIreland Report was a survey of the mental health and wellbeing of LGBTI people in Ireland and included a module surveying general attitudes of the public. Stress, anxiety and depression were measured using the DASS scale with a hierarchy of risk identified. Intersex people had the highest level of depression, anxiety and stress followed by transgender and then bisexual people.

**Administrative records**

* Gender is recorded in the civil registers (i.e. births, deaths, marriages, adoptions, etc.);
* Gender is recorded on Gender Recognition Certificates where a person has legally changed gender;
* There is a separate register of gender recognition for people who change gender and submit a Gender Recognition Certificate;
* Revised birth certificates will display the new gender identity.

**2. What kinds of data can be collected by government to understand the nature and extent of violence (e.g. through statistics on LGBT-phobic hate crimes and hate speech), discrimination, and disparities in health, education, labour, civic participation, and other important areas?**

**Health Surveys**

The Healthy Ireland Survey has not, to date, included questions regarding people’s experience of violence and discrimination. Similarly, MISI was also focussed on health behaviours and did not collect data relating to violence or discrimination.

The HI Survey does report on health behaviours that differ by sexual orientation and can infer health disparities between different population sub groups. For example, with regard to sexual health, questions on relationship status, condom use and HIV testing reveal that men who have sex with men (MSM) are most likely to have had multiple sexual partners and are least likely to be in a relationship with their most recent partner. 54% did not use a condom in their last sexual encounter. However, 12% of MSM have had an HIV test within the last 12 months and 13% have had an STI/STD test within the same time interval (Healthy Ireland Survey, 2017).

MISI identified more detailed sexual behaviours including relationship status, multiple partners, condom use, the prevalence of STI and HIV testing and also alcohol and drug use rates in MSM. EMIS will be published in Q3, 2019.

The Health Service Executive is currently considering the implications of including gender identity on official forms. The collection of data for people who identify as LGBT+ claiming international protection is particularly sensitive as they may be fearful of disclosing their gender identify, especially when coming from countries where this is taboo or criminalised.

**Sexual Violence**

Work is currently on-going in Ireland to address these issue with respect to sexual violence which will be addressed using a household survey. A scoping group report on the topic reported in April 2018 with a proposed data points list covering attitudinal questions, socio-demographic characteristics and detailed questions on sexual abuse in the last 12 months and also, over a life time. Decisions on the final list of data points will be made in 2020.

**Hate or Racist crime**

The Garda Racial Intercultural and Diversity Office (GRIDO) has responsibility for coordinating, monitoring and advising on all aspects of policing Ireland's diverse communities. Ethnic and LGBT liaison officers in each Division also play a fundamental role in liaising with minority groups and work in partnership to encourage respect and understanding within communities and to help prevent hate and racist crime. Both the Garda Racial Intercultural and Diversity Office and Liaison Officers provide advice and assistance to victims of hate or racist crime where required or deemed necessary.

Improvements were made to the Garda PULSE system (PULSE release 6.8) in 2015 and, among the enhancements included in this release, was the introduction of a Victim Assessment Screen. This requires the mandatory recording of data relating to the apparent motive for a crime incident, such as whether it has been motivated by discrimination on specific grounds including age, disability, race, religion, gender or sexual orientation.

Where a person is prosecuted and convicted of committing violence against another person, and it can be demonstrated that the violent act was due, in whole or in part, to the race, sexual orientation, disability, religious identity or gender identity of the victim, that is a matter that is considered as an aggravating factor at sentencing.

The Garda Policing Plan for 2019, work is well underway within An Garda Síochána on the development of a definition of, and procedures to record, hate crimes. Once this definition is agreed, An Garda Síochána will be running a nationwide campaign to encourage the reporting of hate crimes to An Garda Síochána.

The CSO does not currently publish statistics that disclose the number of crimes committed where sexual orientation or gender identity is a motivating factor. However, once there is an agreed definition for hate crime and the work that is planned as part of the Policing Plan 2019 is carried out, the publication of those statistics may be possible in the coming years

**3. What safeguards are in place, and what safeguards are needed, to protect the human rights of individuals providing personal data as well as individuals collecting such data?**

**This question includes the following:**

1. **Safeguards to protect the privacy of individuals who provide data about their sexual orientation/gender identity, and the confidentiality of the data provided by these individuals.**

During the consultation with young people on the LGBTI+ Natioanal Youth Strategy, data was collected anonymously and no photographs were allowed to be taken during the process.

The Healthy Ireland Survey is fully compliant with the GDPR and the Data Protection Act, 2018, that enacted the GDPR in the Republic of Ireland. Potential respondents are contacted and provided with information and privacy notices that advise them of the rationale for the Survey and their rights under GDPR (among other things). Electronically recorded consent is necessary prior to commencement of each interview. Furthermore, following initial data collection and compilation, the data are anonymised. Following analysis and the publication of reports, the GDPR requires deletion of links between anonymised data entries and data such as names and addresses, which are deleted after a defined time interval has expired.

The management of the Healthy Ireland Survey includes significant input from the Department of Health’s Statistics and Analytics Unit, which has close links with the Central Statistics Office (CSO), in order to maintain appropriate data management standards.

Data for MISI and EMIS were compiled by anonymous Internet survey methodology; participation was entirely voluntary and respondents were self-selected.

Access to records of Gender Recognition Certificates, and entries in the register of gender recognition, is strictly confidential and limited to a small number of units, within the Department of Employment Affairs and Social Protection and the General Register Office  (GRO), that have restricted access.

The new questions on gender identity and sexual orientation in the Equality Survey Q1 2019 (currently in the field) are part of a self completion block - the data collection mode for the survey is CAPI but for these questions (also questions on religion and ethnicity), the respondent self completes these questions. Once this self completion block is completed, the interviewer cannot view how the respondent answered these questions. The CSO carried out a very wide consultation process last year in preparation for this survey and national and international experience was that owing to the sensitive and particularly private nature of these questions, that they should be asked in self completion mode. It carried out testing (both cognitive and field) in Autumn last year, including on the self completion block and how respondents reacted to and answered these questions.

1. **Broader statutory rules or administrative policies to insure transparency and accountability of government institutions such as statistical bodies.**

Personal data relating to a naturals person’s sex life or sexual orientation is prohibited under Article 9 of the General Data Protection Regulation 2016/679 EU. However Article 9(2) of the GDPR provides derogations to processing under specific circumstances. As such the processing of this category of personal data is subject to numerous safeguards, in the absence of which the processing is prohibited. In addition to meeting the principles of data protection as outlined in Article 5 of the GPDR you must identify which condition under Article 9 allows you to process special category data:

* explicit consent is obtained from the data subject
* legal obligation on the controller in respect of employment, social security etc.
* protection of the vital interests of the data subject or another person where the data subject is legally or physically incapable of giving consent
* legitimate activities of a non-profit making organisation with a political, philosophical or trade-union aim
* the personal data is manifestly made public by the data subject
* necessary for the establishment, exercise or defence of legal claims or whenever courts are acting in their judicial capacity
* substantial public interest (based on a Union or State law which is proportionate to the aim pursued, respects the essence of the right to data protection and provides specific measures to protect the fundamental rights and freedoms of the data subject)
* necessary for the purposes of preventative or occupational medicine, assessment of working capacity, medical diagnosis, provision of health or social care or treatment or the management of health and social care systems and services on the basis of Union or State law
* public health (on the basis of Union or State law)
* archiving in the public interest, research and statistics.

The confidentiality of all information provided to the CSO by individual respondents is guaranteed by law under the 1993 Statistics Acts. All CSO office and field personnel become "Officers of Statistics" on appointment and are liable to penalties under this Act if they divulge confidential information to any outside person or body. Extreme precautions are taken to ensure that there are no violations of this principle throughout the survey process. The tablets on which the data was collected are encrypted and contain several layers of password protection. Data is only published in aggregate form and care is taken to ensure that the data are aggregated to avoid the indirect identification of respondents.

**4. What are the risks associated with the collection and management of data on sexual orientation and gender identity and initiatives to overcome those?**

Risks associated with data collection would theoretically involve the possibility of accidental data breaches. The Department of Health and Ipsos MRBI (who are currently contracted to manage the Survey on the Department’s behalf) go to considerable lengths in terms of high levels of data security in order to avoid such breaches. However, in the unlikely event of a breach, the situation will be managed in accordance with the GDPR, guidance from the data protection office and Data Protection Officers in both the Department and Ipsos MRBI.

EMIS and MISI respondents were anonymous at the point of data collection, however, data storage and analysis procedures would also be subject to relevant data protection legislation and appropriate precautions with regard to the avoidance of data breaches.

There are particular risks with the collection and management of data of sensitive nature. The data is anonymised, however, so there are no identifiable information to a particular person or household, that could identity a person or household.

**5. Are there circumstances where data collection is ill-advised, such as in countries that criminalize same-sex behavior or where particular government agencies have demonstrated a cause for concern regarding their treatment of issues related to sexual orientation and gender identity?**

There are numerous safeguards in the GDPR and in the Irish Data Protection Act 2018 to protect and limit the processing of special category data such as data relating to sexual orientation. In Section 36 of the Data Protection Act, some examples of suitable and specific measures include imposing strict time limits for the erasure of personal data, specific targeted training for those involved in processing operations, and designating a Data Protection Officer even when not required under the Act. Furthermore, it is recommended that if a processing activity is likely to result in a high risk to the rights and freedoms of a data subject, then a data protection impact assessment (DPIA) should be undertaken before the processing activity takes place. A DPIA is required when a proposed processing activity involves special category data. If after the DPIA there are risks that cannot be mitigated, the controller must consult with the Data Protection Commission in order to proceed.

**6. When States engage in data gathering activity, to what extent is civil society able to meaningfully participate in the design and implementation of these programs? This question includes the following:**

1. **Do states have policies that guide the process of civil society participation national statistical programs and other State efforts to increase knowledge about LGBT populations?**
2. **Does civil society have the capacity, in terms of expertise and technical knowledge, to meaningfully participate in State efforts to gather data?**
3. **What constitutes meaningful participation in this area?**

The [LGBTI+ National Youth Strategy 2018 - 2020 was published in June 2018](https://www.dcya.gov.ie/documents/20180628NatLGBTIYouthStrategy.pdf) . This is a three year action oriented Strategy. The CSO are part of a cross-Departmental Group responsible for the development of the Strategy. A Youth Advisory Group was established to support the development of the Strategy and in designing the consultation process, where they consulted with almost 4,000 young people through workshops around the country and via an online survey.

Also, the CSO held a public consultation on the content for the 2021 Census of Population questionnaire. As part of this process, the CSO established a Census Advisory Group (CAG) comprising data users and subject matter experts, to make recommendations on potential topics and questions. During the engagement, the CAG considered the potential inclusion of a new question on gender identity and explored the challenges of framing a question on this topic.

**7. Does the lack of a global classification scheme carry risks that data will not be useful for international comparisons or will not accurately reflect the identities and lived realities of local populations?**

The MISI and Healthy Ireland Survey are not international, but should reflect the lived realities of local populations. The EMIS Survey that is due for publication in Q3 2019, is funded by the European Commission. The 2010 publication included input from 38 countries.

In developing the questions on gender identity and sexual orientation for the Q1 2019 Equality Survey, a wide consultative process was undertaken on a national and international basis, looking at current and future practices in other national statistical organisations. Only a number of NSIs have included questions on gender identity or sexual orientation or both in their Census or other household surveys. The CSO has aligned its question content to best practice, where possible. For example, ONS UK have done much work on testing for Census 2021 for question on gender identity, and Statistics NZ have included a question on sexual orientation in their NZGSS this year. The NZGSS is a survey of approximately 8,000 people every two years that focuses on well-being. They used the same list of options that was used in the Q1 2019 Equality Questionnaire. Also, questions on gender identity and sexual orientation in Growing up in Ireland Supplementary Young Person 17-18 Years Questionnaire questions are provided below for information:

D2. How would you describe your sexual orientation? [TICK ONE BOX]

Heterosexual/straight (sexually attracted to the opposite sex) .............1

Gay or Lesbian (attracted to the same sex) ..........................................2

Bisexual (attracted to both men and women)........................................3

Questioning/ Not sure............................................................................4

Asexual (not attracted to either sex) .....................................................5

Don’t know.............................................................................................6

Prefer not to say ....................................................................................7

D3. Would you describe yourself as: Male............1 Female .... 2 Other......3 Prefer not to say ... 4

D4. Would you describe yourself as transgender? Yes........ 1 No....... 2 Prefer not to say ... 3