

IRELAND

Most questions require a reply based on the following codification:

a. Yes, already done <input type="checkbox"/>	b. Yes, work is in progress <input type="checkbox"/>	c. We intend to work on this <input type="checkbox"/>	d. Position non determined <input type="checkbox"/>	e. No <input type="checkbox"/>
---	--	---	---	--------------------------------

Section I – Implementation and dissemination of the Recommendation

1. How would you assess the status of implementation of the Recommendation in your country?
Fully satisfactory Adequate Insufficient Absent

Please explain your reply.

The Irish Government is satisfied that good progress has been made and will continue to be made in combating discrimination and promoting equal treatment on grounds of sexual orientation or gender identity in the areas addressed in Recommendation CM/Rec(2010)5. As with combating discrimination on other grounds, it is recognised that this is an ongoing task, to which the Government attaches a high priority.

2. Has a review been carried out of existing legislative and other measures which could result directly or indirectly in sexual orientation or gender identity discrimination?
a. b. c. d. e.

Please explain and, if appropriate, provide examples of any such measures found:

A technical review of the Social Welfare Code to examine its compatibility with the Equal Status Acts was completed by the Department of Social and Family Affairs (now the Department of Social Protection) in 2009. The review arose from an equality case taken against the Department by the Equality Authority on behalf of a same-sex couple in 2003. This issue was addressed through the Social Welfare and Pensions Act 2010. Since the 1st January 2011 same-sex couples are recognised in the Social Welfare code. The material produced in the 2009 report was a technical review for the Department and the issues which were identified are being and have been addressed as appropriate.

Are there measures in place to redress any such discrimination?

- a. b. c. d. e.

Please indicate the measures and, if appropriate, provide examples of good practices:

A framework, built on constitutional and legislative provisions, exists in Ireland at national level to put into effect the principle of equal treatment and combating discrimination. A robust equality infrastructure consists of legal prohibitions on discrimination based on nine specified grounds (gender, civil status, family status, sexual orientation, religion, age, disability, race and membership of the Traveller community), which provides an individual complaints mechanism for persons who suffer discrimination and two specialised bodies – the Equality Authority and the Equality Tribunal, which were established on a statutory basis in 1999. The principal legislative provisions are the Employment Equality Acts 1998-2011 which prohibit discrimination in employment and vocational training and the Equal Status Acts 2000-2012 prohibit discrimination in the supply of and access to goods and services, including housing, education and healthcare. The Pensions Acts 1990-2012 prohibit discrimination in occupational pensions.

Persons who feel they have been discriminated against, harassed or victimised, contrary to the Employment Equality Acts, may refer a complaint to the Equality Tribunal, which is an independent, quasi-judicial forum which has powers to issue legally binding decisions. Complaints may be referred on one or more of the 9 specified discriminatory grounds, or in regard to victimisation. The gender ground has been interpreted in by the Equality Tribunal to apply to transgender persons, while the disability ground applies to persons undergoing treatment in respect to gender reassignment. The Equality Authority works towards the elimination of discrimination and promotion of equality of opportunity in the areas to which equality legislation apply. Its functions also include provision of information to the public about equality legislation and undertaking research. In partnership with public bodies, the private sector, civil society and the academic community, the Equality Authority has developed a series of equality and diversity tools and guidelines for the public and private sector.

3. Have legislative and other measures against discrimination on grounds of sexual orientation or gender identity been adopted and implemented since the adoption of CM Recommendation 2010(5) (including the possible establishment of national action plans, the inclusion of the Recommendation in existing plans, or the creation of cross-sectoral working groups for its implementation)?
- a. b. c. d. e.

If appropriate, please provide examples of measures adopted or in preparation.

Initiatives to promote equal treatment and combat discrimination against LGBT persons have been ongoing in Ireland over the past 10 years, with the Department of Justice and Equality carrying out a coordination role. The Department commissioned a study from the National Economic and Social Forum, published in 2003, on "Equality Policies for Lesbian, Gay and Bisexual People: Implementation Issues" (report no. 27) and subsequently funded a 3-year Policy Liaison & Equality Implementation programme in the Gay & Lesbian Equality Network (GLEN), to work with Government Departments in considering and implementing the recommendations. The engagement between Government agencies and NGOs in the LGBT area established under this programme is ongoing and has led to significant advances, most notably in providing for legal recognition of same-sex partnerships, but also in the areas of health and education. In the period since 2010, civil partnership legislation for same-sex couples has come into force. Recent amendments to the Domestic Violence Act extend the protection of the Act on the same basis to unmarried opposite-sex couples and same-sex couples who have not registered a civil partnership. Work commenced in this period which is still in progress includes development of a national health strategy and action plan for LGBT people, drafting of legislation to provide for legal recognition of change of gender and legislation to reform and bring clarity to issues relating to parentage, guardianship and custody of children of gay couples.

4. Are there measures in place to collect and analyse relevant data on discrimination on grounds of sexual orientation?
- a. b. c. d. e.

Are there measures in place to collect and analyse relevant data on discrimination on grounds of gender identity?

- a. b. c. d. e.

Are there measures in place to collect and analyse relevant data on hate crimes and hate-oriented incidents, where the sexual orientation or gender identity of the victim is reasonably suspected to have constituted a motive for the perpetrator?

- a. b. c. d. e.

Please indicate the measures and, if appropriate, provide examples of good practices:

Equality modules conducted in 2004 and 2010 under the Quarterly National Household Survey have included questions on experience of discrimination on the ground of sexual orientation. An equality analysis has been carried out on the Census of Population 2006 and is in progress in respect of the 2011 Census. While no direct question on sexual orientation is included, the data facilitates analysis on the basis of self-identified same-sex couples. These studies are available from the Central Statistics Office and from the Equality Authority.

Developments in the health and education sectors have been driven by research into the experiences of LGBT persons, undertaken by NGOs and Government agencies working in partnership. Landmark studies are

"Supporting LGBT Lives: A Study of the Mental Health and Well-Being of Lesbian, Gay, Bisexual and Transgender People" commissioned by BeLonG To Youth Services and GLEN (Gay and Lesbian Equality Network), funded by the HSE's National Office for Suicide Prevention (NOSP), published in 2009; and

"Visible Lives: Identifying the Experiences and Needs of Older Lesbian, Gay, Bisexual and Transgender People in Ireland", commissioned by GLEN (Gay and Lesbian Equality Network), funded by Age and Opportunity through the Get Vocal programme and the Health Service Executive, published in 2011.

The Garda Racial, Intercultural and Diversity Office (GRIDO) monitors crimes motivated by factors such as homophobia, racism and xenophobia on a constant basis so as to ensure that all such crimes are properly recorded and investigated.

5. Do effective legal remedies for victims of sexual orientation or gender identity discrimination exist (including sanctions for infringements and adequate reparation for victims)?

- a. b. c. d. e.

If so, are there measures in place to raise awareness and facilitate access of victims to such remedies?

- a. b. c. d. e.

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The forms of redress which the Equality Tribunal may order under equality legislation include orders for equal pay and arrears of pay, orders for equal treatment, compensation for the effects of discrimination, harassment and victimisation, orders for reinstatement or re-engagement, as appropriate in the circumstances of the case. The Equality Tribunal may also order that a named person or persons take a specific course of action, an option which is widely used, for example to require employers to produce and implement equality policies and to train staff appropriately.

Raising public awareness on equality matters, including access to remedies across all 9 discriminatory grounds in equality legislation, is a statutory function of the Equality Authority.

6. Which obstacles, if any, have been encountered in the implementation of the Recommendation?

No particular obstacles have been encountered.

7. Has the Recommendation, including its Appendix, been translated in all your national languages?
a. b. c. d. e.
8. Which steps have been taken to ensure dissemination of the Recommendation and its Appendix as widely as possible?

The Recommendation and its Appendix have been circulated to all Government Departments responsible for the activities within its scope.

Section II – Implementation of the specific provisions in the Appendix

I. Right to life, security and protection from violence

9. Are there measures in place to ensure an effective, prompt and impartial investigation into alleged cases of crimes and other incidents, where the sexual orientation or gender identity of the victim is reasonably suspected to have constituted a motive for the perpetrator?
a. b. c. d. e.

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

All reports of criminal acts are fully investigated by An Garda Síochána (police force), irrespective of the perceived motives of the perpetrators.

10. Are there measures in place to ensure that a bias motive related to sexual orientation may be taken into account as an aggravating circumstance?
a. b. c. d. e.

Are there measures in place to ensure that a bias motive related to gender identity may be taken into account as an aggravating circumstance?

- a. b. c. d. e.

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Where criminal offences such as assault, criminal damage, harassment or public order offences are committed with a bias motive related to sexual orientation or gender identity, they are prosecuted as generic offences through the wider criminal law. The trial judge can take aggravating factors into account at sentencing.

The Prohibition of Incitement to Hatred Act 1989 defines "hatred" as "hatred against a group of persons in the State or elsewhere on account of their race, colour, nationality, religion, ethnic or national origins, membership of the travelling community or sexual orientation". Under Section 2 of the Act, it is an offence to publish or distribute written material or to distribute, show or play a recording of visual images or sounds, if the written material, visual images or sounds are threatening, abusive or insulting and are intended or, having regard to all the circumstances, are likely to stir up hatred. The term "written material" includes any sign or other visual representation. This would apply to material published on websites or social networking sites. Section 3 of the Act provides for an offence of broadcasting any threatening, abusive or insulting material which is likely to or intended to stir up hatred. The term "broadcast" in the 1989 Act is very broadly defined. It means the transmission, relaying or distribution by wireless telegraphy or by any other means or by wireless telegraphy in conjunction with any other means of communications, sounds, signs, visual images or signals,

intended for direct reception by the public whether such communication, sounds, signs, visual images or signals are actually received or not. Similarly, section 4 of the Act provides for an offence where a person possesses a recording of sounds or visual images with a view to its being distributed, shown, played, broadcast or otherwise published, in the State or elsewhere, whether by himself or another. Section 6 of the Interpretation Act 2005 provides for the construction of statutory provisions so as to allow for any changes in law, social conditions and technology which have occurred since the provision was enacted. This would apply to any material broadcast on websites or via the internet.

11. Are appropriate measures taken to ensure that victims and witnesses of sexual orientation- or gender identity-related hate crimes and incidents are encouraged to report them?
- a. b. c. d. e.

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

An Garda Síochána (police force) attach importance to managing with sensitivity cases where members of the lesbian, gay, bisexual and transgender (LGBT) communities are victims of crime. Where appropriate, such a victim is referred to a trained LGBT Officer within An Garda Síochána. This commitment is explicitly stated in An Garda Síochána's policy on the services and support provided to all victims of crime, found in the An Garda Síochána Victims Charter available at www.garda.ie. All victims of crimes are urged to report the matter to their local Gardaí.

12. Do training programmes and procedures exist to ensure that the police, judiciary and prison officials possess the knowledge and skills to identify such crimes and incidents and provide victims and witnesses with adequate assistance and support?
- a. b. c. d. e.

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

All student-probationer Gardaí (police) receive training on dealing with hate motivated crimes, which includes instruction given on the law in relation to hate-motivated crime and the Prohibition of Incitement to Hatred Act 1989 and on the protection of human dignity and the rights of all persons. The Garda Racial, Intercultural and Diversity Office (GRIDO) monitors crimes motivated by factors such as homophobia, racism and xenophobia on a constant basis so as to ensure that all such crimes are properly recorded and investigated. GRIDO has responsibility for coordinating, monitoring and giving advice on policing Ireland's diverse communities and covers all nine grounds of discrimination set out in the Equal Status Act 2000, and works closely with organisations that represent the LGBT communities. It coordinates the work of 328 Ethnic Liaison Officers/LGBT Officers who are based in community policing units in each Garda Division in the country. These officers are given specialist training, including training in sensitivity in dealing with the victims of hate crime, liaise with groups from diverse communities and advise them of the Garda services available.

The Judiciary is independent in the exercise of its functions under the law and the Constitution. Responsibility for Judicial training is a matter for the Committee for Judicial Studies which was established to provide for the training and ongoing education of the judiciary. Training is judged and the content and topics designed by the judiciary itself. Training has been organised for Judges in relation to equality issues. Members of the judiciary have also received a received a Bench Book entitled "The Equal Treatment of Persons in Court".

In the administration of Justice in Ireland, the courts are managed by the Courts Service, which supports the judiciary and provides a high quality and professional service to all users of the

courts. The policy of the Service is to deal with customers in a fair and open manner irrespective of race, gender, socio-economic status, language, disability, and/or other social attributes. The Service has a formal customer complaints procedure and Quality Customer Service Officer to deal with any perceived shortfall in the level of service provided.

Since September 2007, all Recruit Prison Officers complete a two year Higher Certificate in Custodial Care, accredited by Sligo Institute of Technology. As part of this programme all Recruit Prison Officers complete a module on Equality and Diversity including discrimination and racism. They also complete a module on Human Rights which also addresses areas of discrimination and equality.

13. Are there specific measures in place to ensure the safety and dignity of lesbian, gay, bisexual and transgender persons in prison or in other ways deprived of their liberty, in accordance with paragraph 4 of the Appendix to the Recommendation?

a. b. c. d. e.

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

In the **Health sector**, robust measures are in place to ensure the safety and dignity of all persons who are involuntarily detained in approved centres. Section 32 of the Mental Health Act 2001 established the Mental Health Commission as an independent Statutory body, whose principal functions are to promote, encourage and foster the establishment and maintenance of high standards and good practices in the delivery of mental health services and to take all reasonable steps to protect the interests of persons detained in approved centres under the Act. The Commission has developed, following consultation with stakeholders, a quality framework applicable to all mental health services in the public, voluntary and independent sectors. One of the standards in the framework specifically states that Service users receive services in a manner that respects and acknowledges their specific beliefs and experiences, and a criteria used for this standard is that service users experience receipt of care that is in compliance with equality legislation and prohibits discrimination on the grounds of gender, civil status, sexual orientation, religion, age, disability, ethnicity, membership of the Traveller community or social class.

It is the policy of **the Irish Prison Service** that all persons will be treated with dignity and respect as part of the prison community, regardless of their role and background. These principles are reflected in the IPS Mission Statement and core values. The Irish Prison Service is committed to treating its staff with courtesy, respecting personal dignity at all times. As set out in the Irish Prison Service 3 year Strategic Plan, which was launched by the Minister for Justice and Equality in April this year (2012), the Prison Service has committed to introducing a Dignity at Work Charter and launching a prison wide dignity and respect campaign. The Irish Prison Service also has a Bullying and Harassment Policy which covers prohibition of discrimination in the workplace including discrimination on the grounds of sexual orientation. Schedule 1 of the Prison Rules 2007 states that a prisoner will be guilty of a breach of prison discipline if he or she "treats with disrespect, through the use of any abusive, insolent, racist or threatening behaviour or language, the Governor, any prison officer, any prisoner, any visitor to the prison or any other person". Any prisoner found guilty of a breach of prison discipline is subject to disciplinary sanctions. Any prisoner who believes that there is a threat to their safety in the general prison population may seek to go "on protection". A decision will then be taken by the prison governor where that prisoner should be located and if the prisoner should go "on protection". In some instances the prisoner may be transferred to another institution. The immediate separation of prisoners from the general prison population or from specific prisoners

identified as presenting a threat demonstrates the prison management's commitment to ensuring their safety and security. Persons under protective custody are reviewed every month. All operational **Garda** (Police Force) Directives now make reference to the relevant human rights principles applicable to the instruction concerned. All detentions in Garda custody are covered by the Criminal Justice Act, 1984 (Treatment of Persons in Custody in Garda Síochána Stations) Regulations, 1987 and 2006. Those regulations make comprehensive provision for the treatment and care of detained persons. Comprehensive Guidance Notes on the implementation of these regulations issued to each member of the Garda Síochána in 2008. A revised "Information for Persons in Custody" – Form C.72(s) was issued by the Commissioner with the approval of the Minister for Justice and Law Reform. This Form must be read over and given to each detained person to notify them of their rights and also to inform the detainee that the Garda Síochána shall at all times respect their personal rights and dignity as a human being and shall not subject them to ill treatment of any kind. In addition, a revised Custody Record was issued in 2009, providing for a risk assessment for each detained person and providing for all the necessary requirements in relation to a detained person. It acts as a safeguard both for the detained person and the members of the Garda Síochána.

14. Have appropriate measures been taken to combat all forms of "hate speech" against lesbian, gay, bisexual or transgender persons, in accordance with Article 10 of the European Convention on Human Rights and with paragraph 6 of the Appendix to the Recommendation ?
- a. b. c. d. e.

If so, have specific measures been taken to raise awareness of public authorities/ institutions of their responsibility to refrain from statements which may reasonably be understood as legitimising hatred or discrimination against lesbian, gay, bisexual or transgender persons?

- a. b. c. d. e.

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Under Irish criminal law, it is an offence, inter alia, to use words, to publish or distribute written material, or to broadcast any visual images or sounds that are threatening, abusive or insulting and are intended or, having regard to all the circumstances, are likely to stir up hatred. The word "hatred" is defined as "hatred against a group of persons in the State or elsewhere on account of their race, colour, nationality, religion, ethnic or national origins, membership of the travelling community or sexual orientation". All of these offences are contained in a single enactment, the Prohibition of Incitement to Hatred Act 1989. Definitions of "written material" and "broadcast" are specified in the 1989 Act, as well as material on section 6 of the Interpretation Act 2005. This deals with online material.

As outlined above, raising awareness among public bodies and the public in general on equality matters is a statutory function of the Equality Authority. These functions include working towards the elimination of discrimination, promoting equality of opportunity and providing information to the public in the areas covered by equality legislation. Its role also includes undertaking or sponsoring research and dissemination of information relevant to its functions. Similarly, the role of the Human Rights Commission (the national human rights institution) includes promoting understanding and awareness of the importance of human rights in the State. Government plans to merge the Equality Authority and Human Rights Commission into a single organisation with enhanced powers are at an advanced stage.

II. Freedom of association

15. Are there measures in place to ensure that freedom of association (including access to public funding available for non-governmental organisations) can be enjoyed without discrimination on grounds of sexual orientation or gender identity?

a. b. c. d. e.

If any, please provide examples of limitations or exceptions to the guarantees set out in Paragraphs 9 and 10 of the appendix to the Recommendation and indicate whether any measure to review or lift such limitations or exceptions is in preparation:

The Constitution of Ireland explicitly provides for freedom of association (Art.40.6.1(iii)). This right may be exercised within the law, regardless of sexual orientation and gender identity.

16. Are there specific measures in place to effectively protect defenders of human rights of lesbian, gay, bisexual and transgender persons against hostility and aggression, including when allegedly committed by state agents, in accordance with the Declaration of the Committee of Ministers on Council of Europe action to improve the protection of human rights defenders and promote their activities?

a. b. c. d. e.

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The cause of human rights defenders globally is an important aspect of Irish foreign policy, as are the EU Guidelines on Human Rights Defenders which represent a strong political commitment by EU Member States at ministerial level to advancing the work of human rights defenders in the EU's external relations.

Ireland co-sponsored a Resolution on Human Rights, Sexual Orientation and Gender Identity adopted at the United Nations Human Rights Council in June 2011. This was the first time that a United Nations Resolution explicitly acknowledged human rights protection as covering sexual orientation. Ireland is also actively engaged in discussions regarding a resolution on human rights defenders to be tabled at the 22nd Session of the UN Human Rights Council in March 2013. In this regard, Ireland has been engaged in inter-governmental discussions and has also consulted with a number of civil society organisations working on the issue human rights defenders.

At a national level, the Garda Síochána Ombudsman Commission provides the public with an independent oversight of policing and is mandated to receive complaints by members of the public concerning the conduct of members of the police force.

In addition, the Human Rights Commission, Ireland's National Human Rights Institution is mandated to carry out enquiries, provide legal assistance, initiate legal proceedings and appear as Amicus Curiae before the High Court and Supreme Court in cases concerning alleged violations of human rights.

17. Have measures been taken to ensure that non-governmental organisations defending the human rights of lesbian, gay, bisexual and transgender persons are appropriately consulted on the adoption and implementation of measures that may have an impact on the human rights of these persons?

a. b. c. d. e.

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Proposals for introduction or amendment of regulations are subject to a process of regulatory impact assessment (RIA) which incorporates consultation with relevant parties.

As outlined in response to Question 3, under a 3-year policy liaison project from 2006-2009, the Gay and Lesbian Equality Network (GLEN) was funded by the Department of Justice, Equality and Law Reform to engage directly with Government Departments and State bodies to promote equality policies for LGB persons.

Recent initiatives developed in consultation with NGOs representing the LGBT communities include civil partnership legislation, reviews of the equality and human rights infrastructure, alternative models of school patronage, and gender recognition proposals.

Legal recognition for all purposes, including the right to marry and the right to a new birth certificate in the preferred gender, has been examined by the Gender Recognition Advisory Group (GRAG), established in 2010 to advise the Government on the legislation required to give legal recognition to the acquired gender of transgender persons. In examining and reporting on this issue the GRAG completed an extensive consultation. A consultation document inviting submissions from both the public and interested groups was published on the Department of Social Protection website on 4 August, 2010. The Group received 40 submissions in total – 14 from organisations and 26 from individuals. The high quality and constructive nature of the submissions received was noted by the Group. Based on an assessment of the submissions, the Group met with 10 of the organisations and individuals in mid-October, 2010.

The Report of the Group was accepted by the Government on 12 July 2011, and published on 14 July 2011. The Government has accepted its recommendations and has instructed the Minister for Social Protection to prepare the scheme of a Bill to provide for a process to formally recognise the gender of persons who have made a permanent transition to the preferred gender. Since the publication of the report, officials in the Dept. of Social Protection (DSP) have been working on progressing the draft Heads of the Bill.

The Department of Health consults with NGOs representing the LGBT communities with regard to HIV and AIDS and other sexual health matters.

In 1997, the Government established the Department of Foreign Affairs –NGO Standing Committee on Human Rights, in recognition of the role played by the NGO community and civil society in the area of human rights. It comprises representatives of a broad range of civil society organisations in Ireland, who serve in a voluntary capacity, as well as officers of the Department of Foreign Affairs and Trade. The purpose of the Committee is to provide a formal framework for a regular exchange of views between the Department of Foreign Affairs and Trade and civil society representatives. The Gay and Lesbian Equality Network (GLEN) are represented on the Committee.

The Government conducted wide consultation with NGOs and interested stakeholders during 2011 in preparation for Ireland's first report under the UN Universal Periodic Review process and will continue this dialogue. Individuals and NGOs from the LGBT communities played an active part in these consultations.

III. Freedom of expression and peaceful assembly

18. Are there measures in place to ensure that freedom of expression, including freedom to receive and impart information on subjects dealing with sexual orientation or gender identity, can be enjoyed without discrimination on grounds of sexual orientation or gender identity?

a. b. c. d. e.

Are there measures in place to ensure that freedom of peaceful assembly can be enjoyed without discrimination on grounds of sexual orientation or gender identity?

a. b. c. d. e.

If specific limitations or exceptions regarding such freedoms are in place, please provide examples and indicate whether any measure to review or lift such measures is in preparation:

The Constitution of Ireland explicitly provides for freedom of expression (Art. 40.6.1 (i)). This right may be exercised within the law, regardless of sexual orientation and gender identity. The right in Ireland to assemble or meet peacefully and without weapons is also guaranteed by the Constitution (Art. 40.6.1 (ii)). This right is limited by legislation to protect public order and morality. The law prevents or controls meetings that are calculated or designed to cause a riot or breach of the peace. Parades and processions are not illegal but it is a public nuisance to obstruct a highway.

19. Do law enforcement authorities take appropriate measures to protect participants in peaceful demonstrations in favour of the human rights of lesbian, gay, bisexual and transgender persons?
- a. b. c. d. e.

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Gay Pride events and festivities are celebrated peacefully throughout the country, and promoted by the State tourism boards.

The preservation of peace and public order is one of the core functions of An Garda Síochána and the management of this function in situations of crowd protest or civil disobedience requires, among other factors, skilled personnel to ensure the safety of all concerned. Public order training forms part of the Garda student/probationer training programme with additional specialist training provided for members selected for duty with Divisional and regional public order units. Further training is provided for officers in the management of incidents requiring the deployment of public order units. In recognition of the sophisticated response which is required in handling situations relating to crowd protest or civil disobedience, the comprehensive training provided by An Garda Síochána includes nine separate elements from Garda induction to the supervision and tactical command of such incidents. Any individual complaints concerning Garda misconduct in public order situations is subject to independent investigation by the Garda Síochána Ombudsman Commission (GSOC).

IV. Right to respect for private and family life

20. Have measures been taken to ensure that criminal law provisions which, because of their wording or scope, may lead to a discriminatory application with respect to sexual orientation or gender identity are either repealed, amended or applied in a manner which is compatible with the principle of non-discrimination?
- a. b. c. d. e.

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Irish law does not criminalise same-sex sexual acts between consenting adults. There is a single age of consent for same-sex and heterosexual sexual acts.

21. Are there measures in place to ensure that personal data referring to a person's sexual orientation or gender identity are not collected, stored or otherwise used, except where this is necessary for the performance of specific, lawful and legitimate purposes, and that existing records that do not comply with this principle are destroyed?
- a. b. c. d. e.

Please provide examples of exceptions to this principle, if any:

Data protection legislation applies, which states that information held about a person must be accurate, only made available to those that should have it and only used for specified purposes. This legislation also applies to personal data held by An Garda Síochána (the Irish Police Force),

gathered and stored as part of the main function of An Garda Síochána; that is, to investigate and detect crime, to protect life and property and to prevent crime. With some restrictions, a person may request a copy of any personal data being kept on them by An Garda Síochána. The Office of the Data Protection Commissioner is responsible for upholding the privacy rights of individuals in relation to the processing of their personal data.

Under proposals for legislation to give legal recognition to the acquired gender of transgender persons, it is intended that the General Register Office in Ireland (GRO) will keep a record of the Gender Recognition Certificate and other relevant administrative forms, while also retaining records of the original birth certificate and any other identification or relevant information furnished. It is proposed that measures for retention and access to these records would mirror those in place for records relating to adoptions, which GRO has maintained since the 1950's. The GRO has no example of any such records being destroyed for any purpose.

22. Are appropriate measures available to guarantee full legal recognition of a person's gender reassignment in all areas of life in accordance with the provisions of paragraph 21 of the appendix to the Recommendation?

a. b. c. d. e.

Have prior requirements for legal recognition of a gender reassignment been reviewed in order to remove any abusive requirements?

a. b. c. d. e.

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The acquired gender of transgender persons is currently recognised in many official dealings with the State, such as the provision of passports, driving licences and in social welfare, healthcare and revenue matters.

Legal recognition for all purposes including the right to marry and the right to a new birth certificate in the preferred gender has been examined by the Gender Recognition Advisory Group (GRAG), established in 2010 to advise the Government on the legislation required to give legal recognition to the acquired gender of transgender persons. The Report of the Group was accepted by the Government on 12 July 2011, and published on 14 July 2011. The Government has accepted its recommendations and has instructed the Minister for Social Protection to prepare the scheme of a Bill to provide for a process to formally recognise the gender of persons who have made a permanent transition to the preferred gender. The decision-making body will be an independent three-person Gender Recognition Panel. It is intended to introduce the legislation as quickly as possible.

23. Once gender reassignment has been completed and legally recognised, is the right of a transgender person to marry a person of the sex opposite to their reassigned sex effectively guaranteed?

a. b. c. d. e.

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Gender reassignment is not yet recognised in Ireland. However, the General Registrar Office in Ireland (GRO) will accept a birth certificate amended by another State where gender reassignment is recognised in support of notification of intention to marry or to enter into a civil partnership, from a person born outside of Ireland.

It is proposed to include provision for civil marriage in the proposed gender recognition legislation in order that a transgender person may marry a person of the opposite sex to their

reassigned sex. Provision will also be made in order that a transgender person may enter into a Civil Partnership with a person of the same sex as their reassigned sex.

24. Where national legislation recognises registered same-sex partnerships, are their legal status, rights and obligations equivalent to those of heterosexual couples in a comparable situation?
- a. b. c. d. e.

If national legislation does not recognise nor confer rights to registered same-sex partnerships and unmarried couples, has the possibility been considered to provide same-sex couples with legal or other means to address the practical problems related to this fact in their lives?

- a. b. c. d. e.

Please provide examples:

Under the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 a statutory civil partnership registration scheme for same-sex couples was introduced on 1st January 2011. Under the scheme registered civil partners have broadly the same rights and obligations towards each other as the rights and obligations of married couples towards each other. The Government has referred the issue of same-sex marriage to the Convention on the Constitution established in 2012 to consider and make recommendations on certain topics as possible future amendments to the Constitution.

The Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 also amended a number of laws where rights are already available to opposite-sex cohabitants in order to make such rights available to same-sex cohabitants, such as providing for inheritance of tenancies, civil liability in the event of wrongful death, and matters concerning enduring powers of attorney. A redress scheme was also introduced for long-term cohabiting couples whose relationship has ended, which provides for a broadly similar range of orders as are available to married couples when they separate or divorce.

25. Are there measures in place to ensure that decisions regarding parental responsibility and adoption of a child are taken primarily in the child's best interest, as well as without discrimination based on sexual orientation or gender identity?
- a. b. c. d. e.

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The rights of the child, and ensuring that in this area the best interests of the child are the paramount consideration, has a firm constitutional basis in the new provisions contained in Article 42A of the Constitution, effected by referendum in 2012.

Issues concerning guardianship of children in households headed by same-sex couples, and related matters are being examined in the context of recommendations from the Law Reform Commission. A Family Relationships and Childrens Bill is in preparation to reform and bring clarity to issues including those relating to parentage, guardianship and custody of children of gay couples.

Under Irish law, adoption is permitted by a single person (irrespective of the individual's sexual orientation or gender identity), or by married couples (jointly). There is no provision for joint adoption by unmarried opposite-sex couples or same-sex partners.

V. Employment

26. Does legislation prohibit discrimination in employment in the public and private sector on grounds of sexual orientation?
- a. b. c. d. e.

Does legislation prohibit discrimination in employment in the public and private sector on grounds of gender identity?

- a. b. c. d. e.

If so, are there measures in place concerning in particular:

- i) Access to employment
a. b. c. d. e.
- ii) Promotion, dismissals, pay and other working conditions
a. b. c. d. e.
- iii) Prevention and punishment of harassment
a. b. c. d. e.
- iv) Protection of privacy of transgender persons
(in accordance with paragraph 30 of the Appendix to the Recommendation)
a. b. c. d. e.

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

As outlined in response to Question 2, the scope of the Employment Equality Acts extends to all the areas listed and prohibits discrimination, harassment on grounds including sexual orientation, gender & disability (covering gender identity and transgender) and civil status (includes registered partnership), sexual harassment and victimisation. A statutory Code of Practice on harassment and sexual harassment in the workplace setting out good practice in this area has been in place since 2002 and was updated in 2012.

Irish equality legislation facilitates submission of complaints of discrimination on multiple grounds. While issues of gender identity are not referred to explicitly in equality legislation, the Equality Tribunal has found discrimination on the grounds of gender and disability to be relevant to the situation of a transgender person in transition. The practical impact of this decision is that people in transgender situations are protected from discrimination by our legislation.

Data protection legislation applies to protect the privacy of transgender persons. This states that information held about a person must be accurate, only made available to those that should have it and only used for specified purposes. The Office of the Data Protection Commissioner is responsible for upholding the privacy rights of individuals in relation to the processing of their personal data.

VI. Education

27. Are there appropriate legislative and other measures, addressed to educational staff and pupils, to ensure that the right to education can be effectively enjoyed without discrimination on grounds of sexual orientation or gender identity, taking into due account the over-riding interests of the child and the rights of parents regarding education of their children?

- a. b. c. d. e.

If so, are there measures in place concerning in particular:

- i) Anti-discrimination training or support and teaching aids
a. b. c. d. e.
- ii) Information, protection and support for pupils and students
a. b. c. d. e.
- iii) Objective information on sexual orientation and gender identity in school curricula
a. b. c. d. e.
- iv) School equality and safety policies and action plans
a. b. c. d. e.

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The Employment Equality Acts 1998-2011 and the Equal Status Acts 2000-2012 are relevant to activities that occur in the school setting. The Equal Status Acts require that schools do not discriminate across the nine grounds, which includes discrimination on the grounds of sexual orientation and gender identity. The Education Welfare Act 2000 requires each school to prepare a Code of Behaviour. Specific measures to assist schools tackle homophobic bullying are dealt with in the context of overall anti-bullying measures within the school Code of Behaviour.

The Department of Education and Skills Inspectorate provides supports to schools through supporting/advising and evaluating anti-bullying measures, which includes homophobic bullying, through Whole School Evaluations at primary and post-primary level and through Social Personal and Health Education (SPHE) subject inspections. The Social Personal and Health Education (SPHE) is a mandatory part of the curriculum in primary schools and in junior cycle since 2003. SPHE, in providing opportunities to foster the personal development, health and well-being of the child allows for addressing issues of sexual orientation. The SPHE Support Service provides a range of services to support this area, including courses for SPHE teachers – topics include bullying awareness and prevention.

In recent years there has been a considerable amount of work done to address the issue of bullying in schools by State agencies and by NGOs such as GLEN and BeLongTo and collaborative efforts of all of the foregoing. In recognition of the fact that existing guidelines and templates on countering bullying in schools needed to be updated, particularly in relation to homophobic bullying, a Forum to explore ways of tackling bullying in schools, was held in May 2012.

Following the Forum the Minister for Education and Skills also established a working group to address the issue of tackling bullying in schools. The Group is considering further actions required to tackle bullying in schools, including homophobic bullying, cyber bullying and racist bullying in particular. A 12-point national Action Plan on Bullying was also launched in January 2013 by the Minister for Education and Skills. This Action Plan, applicable to all schools, includes a focus on homophobic bullying.

VII. Health

28. Are there appropriate measures in place to ensure that the highest attainable standard of health can be effectively enjoyed without discrimination on grounds of sexual orientation or gender identity, in accordance with the provisions of Paragraph 33 of the Appendix to the Recommendation?

a. b. c. d. e.

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Equality legislation requires access to healthcare services on a non-discriminatory basis.

NGOs have worked with a number of professional bodies in the healthcare field, with support from State bodies as appropriate, to develop LGBT-inclusive policies and good practice guides. To date, these include guides on LGB issues for doctors in general practice, primary care staff, psychiatrists, psychologists, mental health staff, social workers and for Samaritans Volunteers. (Available from the website of the Gay and Lesbian Equality Network, www.glen.ie).

Similarly, guides on transgender and gender diversity issues have been produced for psychiatrists, psychologists and for guidance counsellors (available from the website of Transgender Equality Network Ireland, www.teni.ie).

Health and personal social services are delivered by the Health Service Executive (HSE). In 2009, the HSE published an exercise, "LGBT HEALTH: Towards meeting the healthcare needs of lesbian, gay, bisexual and transgender people", to map out existing health-related services, supports, gaps and actions for the LGBT community in Ireland, detailing key health priorities for this population group as evidenced in Irish and international research. The report sets out a number of recommendations to advance the work commenced through this exercise, including development of a National HSE Strategy and Action Plan for LGBT people. This action plan is in preparation and expected to be published shortly.

29. Has homosexuality been removed from the national classification of diseases?

- a. b. c. d. e.

30. Are there measures in place to ensure that transgender persons have effective access to appropriate gender reassignment services?

- a. b. c. d. e.

If there are limitations to the costs covered by health insurance for gender reassignment, please explain:

There are no limitations in law in this regard. Cover depends on the terms and conditions of the individual's insurance contract.

Under the Health Insurance Act 1994 (Minimum Benefit Regulations 1996), insurers are required to provide a minimum level of cover to every insured person. The Minimum Benefit regulations exclude "cosmetic services or treatment except the correction of accidental disfigurement or significant congenital disfigurement". While some of the procedures associated with gender reassignment (i.e. hysterectomy and breast reduction) are performed in Ireland, insurance cover would only be provided if deemed medically necessary. Certain elements of treatment, e.g. hormonal treatment, can be conducted on an outpatient basis and may be covered depending on the health insurance policy held.

VIII. Housing

31. Are measures taken to ensure access to adequate housing can be effectively and equally enjoyed by all persons, without discrimination on grounds of sexual orientation or gender identity, that protection is provided against discriminatory evictions, and that equal rights are guaranteed in respect of ownership of land and other property,?

- a. b. c. d. e.

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Equal Status legislation prohibits discrimination on grounds including civil status, gender, disability, sexual orientation in housing and in access to goods & services. The Residential Tenancies Act 2004 (RTA) provides the regulatory framework for the private rented residential sector and for the operation of the Private Residential Tenancies Board (PRTB). Under the RTA a tenancy may only be terminated by means of a notice of termination that complies with the provisions of the RTA and gives the required statutory notice period. Where a tenant believes that their tenancy has been invalidly terminated he or she may refer the dispute to the PRTB for resolution. Tenants may also refer a case to the PRTB where there is any dispute in relation to the tenancy, including the failure of a landlord to comply with their obligations under the RTA or any other Act (e.g. s. 6(1) of the Equal Status Act 2000). The PRTB is an independent agency and provides an independent and accessible means of resolving disputes between landlords and tenants.

Existing protections against discriminatory behaviour in the administration of local authority social housing will be enhanced by proposals for legislation currently in development. These proposals would require an independent hearing and ruling in cases of proposed repossession of local authority dwellings, where there is a dispute about the grounds for the repossession.

32. With respect to the risk of homelessness faced by lesbian, gay, bisexual and transgender persons, in particular young persons and children, are measures taken to ensure that the relevant social services are provided without discrimination on grounds of sexual orientation or gender identity?
- a. b. c. d. e.

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Access to homeless services is assessed on the basis of need and is provided on a humanitarian basis regardless of sexual orientation and gender identity. In their allocation of public housing, housing authorities are permitted to take account of the differing needs of households (e.g. disability, size of family, etc.).

The Government made a commitment in the Programme for Government to review and update the current National Homelessness Strategy and to adopt a housing-led approach to homelessness. As a consequence of this commitment the Minister for Housing and Planning will publish a new Homelessness Policy Statement shortly. The policy statement has been informed by specially commissioned research and consultations with other Government Departments and agencies, the voluntary sector and other stakeholders. The statement will be explicit regarding the adoption of a housing-led approach to the accommodation of homeless people. Housing-led is about accessing permanent housing as the primary response to homelessness, incorporating the provision of adequate supports to people in their homes according to their needs.

The Government's commitment includes a specific focus on youth homelessness. A high level review of the 2001 Youth Homelessness Strategy will be also completed shortly. The recommendations from this review will inform the policy response required in this area. Services report that no children have been found sleeping rough over the past two years.

IX. Sports

33. Have measures (including awareness-raising measures) been taken to tackle discrimination on grounds of sexual orientation or gender identity (including the use of discriminatory insults) in sports and in connection with sports events?
- a. b. c. d. e.

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The prohibition on discrimination on grounds including gender, sexual orientation and disability under Equal Status legislation applies to sport and to the activities of registered clubs, while permitting certain differences in treatment on the ground of gender and disability.

The Irish Sports Council (ISC), which is funded by the Department of Transport, Tourism and Sport, is the statutory body with responsibility for the promotion, development and coordination of sport. The Code of Ethics and Good Practice for Children's Sport clearly identifies that no one should be discriminated against within sport on *any* ground. This is clearly outlined within the training courses delivered to support the Code through the National

Governing Bodies of sport and Local Sports Partnerships. The ISC will continue to highlight the issue through its work on the Code of Ethics with its stakeholders.

X. Right to seek asylum

34. In cases where your country has an international obligation in this respect, may a well-founded fear of persecution based on sexual orientation or gender identity be recognised as a valid ground for the granting of refugee status and asylum under your national law?
- a. b. c. d. e.

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

National regulations (S. I. No. 518 of 2006 European Communities (Eligibility for Protection) Regulations 2006) give effect in Ireland to EU Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection.

In the investigation of claims of persecution on the basis of sexual orientation, the following factors are relevant:- each case is assessed on its merits; each applicant is interviewed and every opportunity is given to an applicant to explain all the circumstances of their cases and reasons why they fear returning to their country of origin; and in assessing such cases, issues such as whether the treatment feared equates to persecution, whether internal protection in another part of the country is available, country of origin information in relation to the laws and treatment of persons on the basis of their sexual orientation in the country of origin are all relevant factors to be taken into account.

In relation to good practice, caseworkers working in the Office of the Refugee Applications Commissioner (ORAC) and members of the Refugee Appeals Tribunal are aware of the UNHCR Guidance Note on Refugee Claims relating to Sexual Orientation and Gender Identity which provides guidance in respect of refugee claims related to sexual orientation and gender identity. Both sexual orientation and gender identity are recognised as valid grounds for granting refugee status where established as the basis of persecution. UNHCR guidelines in relation to the investigation and determination of such claims, state that "A person cannot be expected or required by the State to change or conceal his or her identity in order to avoid persecution. As affirmed by numerous jurisdictions, persecution does not cease to be persecution because those persecuted can eliminate the harm by taking avoiding action."

ORAC has regard to emerging jurisprudence and international best practice and provides a comprehensive programme of training for caseworkers who are involved in investigating and determining applications for asylum. This would include interviewing techniques on vulnerable applicants, such as persons persecuted on the basis of their sexual orientation. ORAC also liaises with relevant groups in civil society in Ireland on the refugee determination process including in relation to lesbian, gay, bi-sexual and transgender issues. Relevant civil society groups also input into ORAC's training programme.

35. Does your country ensure that asylum seekers are not sent to a country where their life or freedom would be threatened because of their sexual orientation or gender identity?
- a. b. c. d. e.

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

In the context of the asylum system in Ireland, Section 5 of the Refugee Act 1996 on the 'prohibition of refoulement' states that a person shall not be returned to a country where they would be threatened on account of membership of a particular social group, defined as including a group of persons whose defining characteristic is their belonging to the female or the male sex or having a particular sexual orientation.

In determining whether to make a deportation order in relation to a person whose application for asylum has not been successful and who has exhausted the possibilities of appeal under the asylum system, the Minister for Justice and Equality shall have regard to all relevant facts of a case and in particular (as per Section 3(6) of the Immigration Act, 1999)

- (a) the age of the person
- (b) the duration of residence in the State of the person
- (c) the family and domestic circumstances of the person
- (d) the nature of the person's connection with the State, if any
- (e) the employment (including self - employment) record of the person
- (f) the employment (including self - employment) prospects of the person
- (g) the character and conduct of the person both within and (where relevant and ascertainable) outside the State (including any criminal convictions)
- (h) humanitarian considerations
- (i) any representations duly made by or on behalf of the person
- (j) the common good and
- (k) considerations of national security and public policy.

Each case is considered on its own merits and all facts are taken into consideration.

XI. National Human Rights Structures

36. Are National Human Rights Structures (equality bodies, ombudsperson, and national human rights institutions) clearly mandated to address discrimination on grounds of sexual orientation?

- a. b. c. d. e.

Are National Human Rights Structures (equality bodies, ombudsperson, and national human rights institutions) clearly mandated to address discrimination on grounds of gender identity?

- a. b. c. d. e.

If so please explain and indicate in particular, if appropriate, what possibilities of intervention are included in their mandate, including in particular with respect to discrimination on multiple grounds:

The mandate of the Equality Authority extends to all grounds under national equality legislation, which explicitly include gender and sexual orientation. The Authority's powers extend to informing to the public on equality legislation, advice and support of complainants and investigating and taking complaints where it is not reasonable to expect a victim of discrimination to do so themselves. The Authority also has an important role in developing and promoting good practice by employers and service providers. The mandate of the Human Rights Commission (HRC) extends to implementation by the State of the ECHR and it may act as amicus curiae to assist the courts in interpretation of national human rights legislation.

Government proposals to merge the Equality Authority and the Human Rights Commission into a single enhanced Irish Human Rights and Equality Commission are being advanced this year.

XII. Discrimination on multiple grounds

37. Are there measures in place to ensure that the provisions of national law prohibiting or preventing discrimination also protect against discrimination on multiple grounds, including on grounds of sexual orientation or gender identity?

- a. b. c. d. e.

The Employment Equality and Equal Status legislation is framed to permit the taking of cases on multiple grounds. Approximately 20-25% of complaints referred annually to the Equality Tribunal under this legislation are complaints made on multiple grounds.

Section III - Follow-up

38. Which measures by the Council of Europe would you recommend to ensure that member states are guided in their national legislation and practice by the principles set out in the Recommendation and in its Appendix?

Ireland suggests that the questionnaire responses from the member states are published.

39. Should the Council of Europe continue examining periodically the implementation of this Recommendation? If so, should such examination in future concentrate on specific issues, and which specific issues would you recommend examining in that case?

Ireland would welcome a broad examination of the implementation of this Recommendation in order to encourage continued progress in this area. Ireland would recommend periodic examination every three years as opposed to an annual exercise, particularly given current resources constraints but also to allow for a broader overview to take place of implementation between each review.

40. Are there any issues on which the Recommendation and its Appendix should be revised or completed? If so, please indicate them.

None at present.