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The latest eHealth developments in Ireland

In February 2018 the Irish Government published its National Development Plan for 2018-2027 as part of Project Ireland 2040. The Plan includes various healthcare initiatives that have been welcomed by stakeholders in the sector, such as investment in eHealth, and particularly ICT infrastructure, to enable the integration of services and the flow of information across and within various care settings. Adam Finlay, Partner at McCann FitzGerald, explains the latest health reform initiatives in Ireland.

The inclusion of eHealth in the National Development Plan for 2018-2027 follows a significant focus on eHealth in a report published in May 2017 by an all-party Oireachtas (Irish Parliament) Committee on the Future of Healthcare, named the Sláintecare Report. Despite these noteworthy statements of support and funding for eHealth initiatives in Ireland, there are a range of tasks to be addressed to create an appropriate environment for eHealth to flourish within the Irish healthcare system, not least in relation to new enabling legislation. In particular, it remains to be seen how this proposed Irish legislative framework is intended to interact with the General Data Protection Regulation.

Over the last five years in particular, the Irish Government has been engaging in a number of key initiatives aimed at modernising the collection, use and management of health information in an effort to achieve an integrated healthcare system for the collective benefit of all stakeholders in the system. Developing the legal framework for eHealth in Ireland has formed part of these initiatives, however progress in this area has been mixed and there are some significant areas that have yet to be addressed or clarified. To recap:

Ireland's eHealth Strategy (2013)

This document brought together various initiatives that were taking

place at the time and set out a strategy and roadmap for the development of eHealth programmes. One significant outcome following the publication of this Strategy was the establishment of eHealth Ireland, the body responsible for coordinating and governing the various eHealth initiatives in compliance with the eHealth agenda. Key priorities identified in this Strategy included the introduction of national identifier infrastructure (subsequently implemented via the Health Identifiers Act 2014 discussed below), ePrescribing systems, online referrals and scheduling, telehealthcare, online access to health information, the development of patient summary records and a national patient portal. The proposals outlined in this Strategy were supplemented by the Department of Health's launch of its eHealth Strategy for Ireland in 2015.

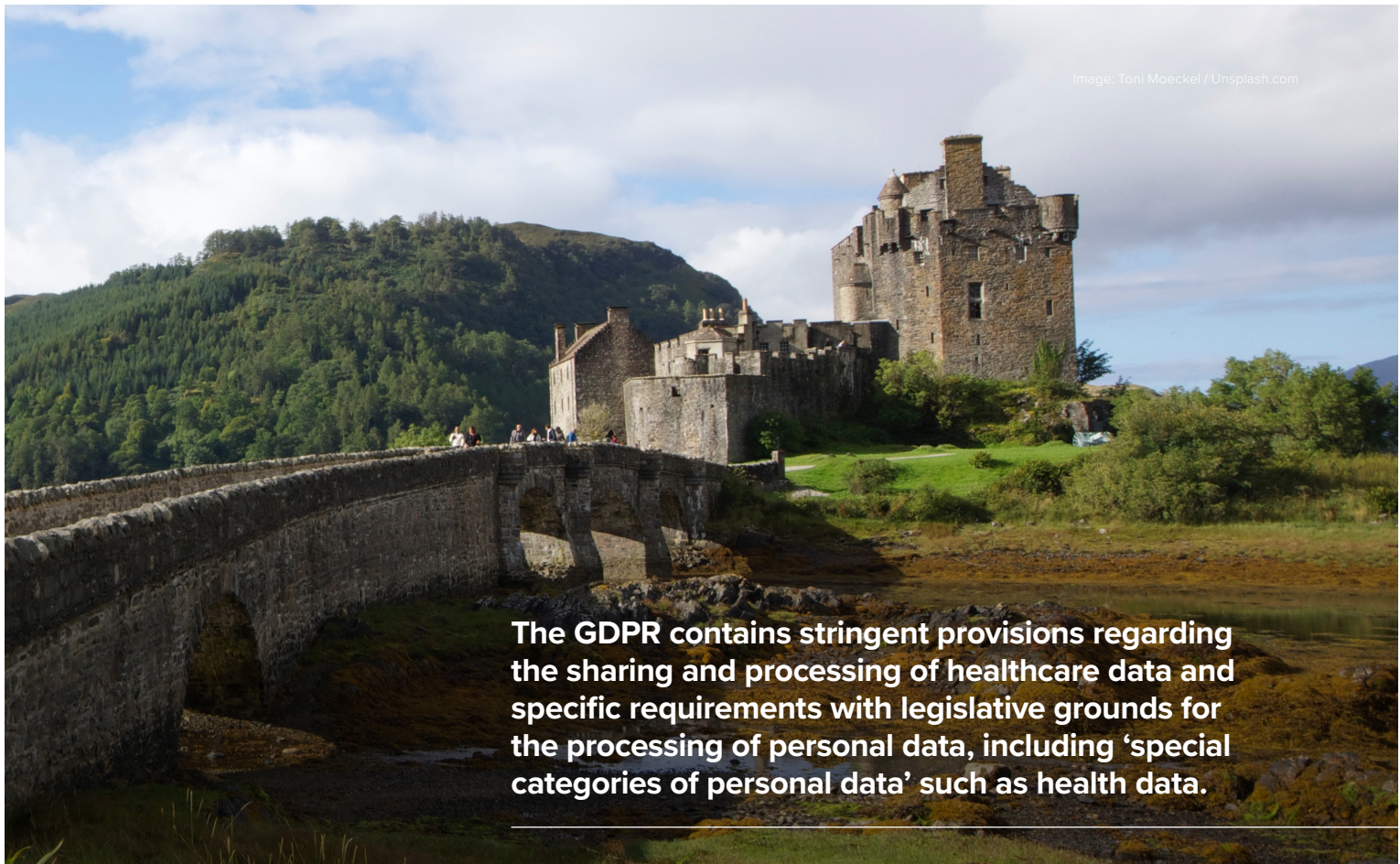
The Health Identifiers Act 2014

The Health Identifiers Act 2014 was enacted on 8 July 2014. It provides for the creation of an individual health identifier ('IHI') which will serve the purpose of uniquely identifying individuals using health or social care services in Ireland. Furthermore, the Act provides for the establishment of a national register of IHIs. This register may be accessed by specified persons under the Act including health service providers and a number of agencies including the Chief Inspector of Social Services, the Health Research

Board, the Mental Health Commission and any other person prescribed by the Minister for Health following consultation with the Data Protection Commissioner.

Several statutory instruments have been passed under, and amendments made to, the Act since its adoption. Whilst not yet fully commenced, the Act has been largely brought into force with the most recent commencement order having been passed on 30 May 2017. This order allows for the operational use of IHIs throughout the Irish healthcare system and more specifically, the sections commenced address accessing the register of IHIs and processing IHIs for the purposes provided for in the Act.

The 2014 Act includes a number of references to the Data Protection Acts 1988 and 2003, which will be repealed except for very limited purposes by the Irish Data Protection Bill 2018, once it is enacted. The 2018 Bill (soon to be the 2018 Act) will be the key piece of Irish data protection legislation that will, among other things, supplement the GDPR. At the time of writing, this Bill is still in the process of being finalised by the Oireachtas, under significant time pressure as a result of the looming date of application of the GDPR. The Bill ought to contain amendments to existing Irish legislative instruments that contain references to the Data Protection Acts 1988 and 2003, which will need to be



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updated. However, the latest version of the Bill (being the version passed by the Irish Senate on 28 March 2018) does not yet contain provisions to update the 2014 Act as necessary.

The Health Information and Patient Safety Bill (2015)

Another key element of the proposed legislative framework for eHealth in Ireland is the Health Information and Patient Safety Bill 2015. To date, only the General Scheme of the Bill has been published, in late 2015. The Bill, which will be broad in scope, is intended to include, among other things, a number of key health information provisions.

The General Scheme of the Bill envisages that it will introduce certain obligations regarding ‘personal health data,’ that may be contained in ‘health records,’ which will be newly defined terms. For example, it will require health service providers to forward health records to another health service provider at the request of the patient. The Bill will provide for the sharing of health information by prescribed statutory regulatory bodies in certain instances. Also contained in the General Scheme is a proposal to increase the interoperability of computer systems used in health services by giving the Minister for Health power to “set standards for the efficient and effective electronic exchange of health information.”

Following referral by the Minister for Health, the Oireachtas Joint Committee on Health and Children published its Report on the pre-legislative scrutiny of the Bill in May 2017. One point raised was whether there might be compatibility issues between the proposed Bill and the GDPR.

The GDPR contains stringent provisions regarding the sharing and processing of healthcare data and specific requirements with legislative grounds for the processing of personal data, including ‘special categories of personal data’ such as health data. It is questionable whether the Bill, as envisaged by the General Scheme, addresses key requirements of the GDPR.

In addition, the General Scheme of the Bill envisages roles for the Data Protection Commissioner (soon to be replaced by a new statutory body to be known as the Data Protection Commission (‘DPC’)). However, during the pre-legislative scrutiny of the Bill, the Data Protection Commissioner Helen Dixon stated that that her office would not legally be able to perform certain functions envisaged for it in the Bill, as they would give rise to a conflict with broader data protection obligations of the DPC. The Report on the pre-legislative scrutiny of the Bill identifies this as a notable flaw in the

architecture of the key provisions of the Bill. This issue, along with more general requirements to align the Bill fully with the requirements of the GDPR, are among the points that will need to be addressed before this key legislative element of Ireland’s eHealth Strategy can progress.

Looking to the future

The references to substantial investment in eHealth and ICT infrastructure in Ireland’s National Development Plan and the Sláintecare Report indicate that these continue to be key areas of focus for the ongoing reform of the Irish healthcare system. However, the modest legislative progress made in this area since the publication of Ireland’s eHealth Strategy in 2013 is indicative of a slow pace of reform. If the ambition that is evident in the Plan, Report and Strategy is to be realised, the requirements of the GDPR will need to be considered and addressed in the enabling legislative framework that will be required.

Those with an interest in the development of eHealth in Ireland will hope that, once the dust settles on the development and enactment of the Data Protection Bill, legislative attention can turn to updating and progressing the Health Identifiers Act 2014 and the Health Information and Patient Safety Bill as necessary.