

Memorandum of Understanding concerning cooperation in the regulation of the protection and appropriate use of personal information

1. Background

The **Health Information and Quality Authority (HIQA)**, established under the Health Act 2007 as amended, and having its head office at Unit 1301 City Gate, Mahon, Cork, Ireland; and the Office of the **Data Protection Commissioner (DPC)**, established under the Data Protection Act 1988 as amended, and having its office at Canal House, Station Road, Portarlinton, Co. Laois, Ireland wish to establish a framework for cooperation in the area of regulation of the protection and appropriate use of personal information.

The Health Information and Quality Authority is the independent authority established to drive continuous improvements in Ireland's health and social care services. HIQA's mandate extends across the quality and safety of the public, private (within its social care function) and voluntary services. The Authority's remit also includes setting standards for health information, including information governance, and identifying gaps and deficiencies in health information.

The Office of the Data Protection Commissioner (DPC) is responsible for upholding the rights of individuals as set out in the Data Protection Acts and enforcing the obligations upon data controllers. The Commissioner is appointed by the government and is independent in the exercise of his or her functions. Individuals who feel their rights are being infringed can complain to the Commissioner, who will investigate the matter and take whatever steps may be necessary to resolve it.

2. Objectives

This Memorandum of Understanding (MOU) is intended to assist and support both HIQA and the DPC in performing their individual functions. In particular it takes note of areas of potential cooperation and collaboration in the interest of ensuring the protection and appropriate use of service users' personal information. The objectives of this MOU are:

- a) to promote cooperation in areas of strategic and high-level operational interest
- b) to facilitate cooperation on cross referral of concerns where one organisation believes that it falls within the remit of the other (or both);

This MOU represents the understanding reached by HIQA and the DPC, in particular:

- that both signatories have jurisdiction over different areas of regulation. This MOU is intended to cover areas of common interest or where cooperation will lead to better informed regulation; and
- that both signatories may in particular circumstances, limit the scope of disclosure of information only if the disclosure is contrary to the public interest or the interests of the participant concerned, is in breach of or is inconsistent with statutory obligations or requirements or other obligations and requirements imposed by law.

3. Governing legislation

The Health Information and Quality Authority was established by the Health Act 2007 with the object to 'promote safety and quality in the provision of health and personal social services for the benefit of the health and welfare of the public' (section 8, Health Act, 2007, as amended). The principal functions under the Health Act 2007 include:

- to set standards on safety and quality in relation to services provided by the Health Service Executive (HSE) or a service provider in accordance with
 - the Health Acts 1947 to 2007, except for services under the Mental Health Acts 1945 to 2001 that, under the Health Act 2005, are provided by the HSE
 - the Child Care Acts 1991 and 2001
 - the Children Act 2001, and
 - services provided by a nursing home as defined in section 2 of Health (Nursing Homes) Act 1990
- to monitor compliance with standards and to advise the Minister and HSE accordingly;
- to undertake investigations as to the safety, quality and standards of services;
- to evaluate the clinical and cost effectiveness of health technologies including drugs and provide advice arising out of the evaluation to the Minister and the HSE;
- to evaluate available information respecting the services and the health and welfare of the population;
- to provide advice and recommendations to the Minister and the Executive about deficiencies identified by the Authority in respect of information identified respecting the services and health and welfare of the population
- to set standards as the Authority considers appropriate for the Executive and service providers respecting data and information in their possession in relation to services and the health and welfare of the population
- to operate other such schemes aimed at ensuring safety and quality in the provision of services.

The Health Information and Quality Authority must comply with Data Protection Acts 1988 and 2003, and the Freedom of Act 1997 and 2003.

The Office of the Data Protection Commissioner (DPC) was established under the Data Protection Act 1988 as amended, with the mission to uphold individuals' fundamental right to privacy.

The general powers of the DPC, as defined by the Data Protection Act 1988 and subsequent amendments are:

- under section 10 of the Data Protection Acts, 1988 and 2003, the Commissioner will investigate any complaints which he receives from individuals who feel that personal information about them is not being treated in accordance with the Act, unless he is of the opinion that such complaints are "frivolous or vexatious"
- under section 12 of the Data Protection Acts, 1988 and 2003, the Data Protection Commissioner may require any person to provide him with whatever information the Commissioner needs to carry out his functions, such as to pursue an investigation
- under section 10 of the Data Protection Act, 1988, the Data Protection Commissioner may require a data controller or data processor to take whatever steps the Commissioner considers appropriate to comply with the terms of the Data Protection Act, 1988
- under section 11 of the Data Protection Acts, 1988 and 2003, the Data Protection Commissioner may prohibit the transfer of personal data from the State to a place outside the State
- under section 24 of the Data Protection Acts, 1988 and 2003, the Data Protection Commissioner may appoint an "authorised officer" to enter and examine the premises of a data controller or data processor, to enable the Commissioner to carry out his functions, such as to pursue an investigation
- Section 30 of the Data Protection Acts provides that the Commissioner may bring summary proceedings for an offence under the Acts. The Commissioner also has the power to prosecute offences in relation to unsolicited marketing under S.I. 535 of 2003 (Electronic Communications Regulations) (as amended by SI 526 of 2008)

4. Areas of cooperation

HIQA and the DPC having reached the above understanding will:

- a) undertake to communicate as appropriate on all matters of strategic mutual and operational interest. Communication will be conducted on both a formal basis through scheduled meetings and informally on an ad hoc basis
- b) facilitate cooperation on cross-referral of concerns where one organisation believes that it falls within the remit of the other (or both) and where there are concerns in relation to the protection and appropriate use of service users' personal information. In the conduct of this activity both organisations will respect, maintain and adhere to all requirements of the relevant legislation.

- For HIQA this includes but is not limited to HIQA's statutory role under the Health Act 2007 and subsequent amendments.
- For the DPC this includes but is not limited to the DPC's statutory role under the Data Protection Act 1988 as amended.
- A protocol governing the means by which the cross-referral outlined above will take place will be developed jointly by HIQA and the DPC as part of this MOU.

5. Confidentiality

a) Health Information and Quality Authority

- i. Nothing in this MOU requires HIQA to release confidential information to the DPC except in accordance with law
- ii. Unless otherwise required by law, HIQA will not disclose any information received from the DPC under this MOU, except with the written consent of the DPC. If disclosure is required by law, HIQA will take all reasonable measures to ensure that the information received from the DPC will be disclosed in a manner that protects the information from any disclosure that is not required or authorised by law
- iii. Unless otherwise required by law, HIQA will not use the information disclosed to it under this MOU for any other purpose other than the performance of its regulatory activities/statutory functions.

b) The Office of the Data Protection Commissioner

- i. Nothing in this MOU requires the DPC to release confidential information to HIQA except in accordance with law
- ii. Unless otherwise required by law, the DPC will not disclose any information received from HIQA under this MOU, except with the written consent of HIQA. If disclosure is required by law, the DPC will take all reasonable measures to ensure that the information received from HIQA will be disclosed in a manner that protects the information from any disclosure that is not required or authorised by law.
- iii. Unless otherwise required by law, the DPC will not use the information disclosed to it under this MOU for any other purpose other than the performance of its regulatory activities/statutory functions.

6. Financial arrangements

Each participant will be solely responsible for the administration and expenditure of its own resources associated with activities conducted under this MOU.

7. Variation

Any provision of this MOU may be amended at any time by the mutual consent in writing of the participants via the respective signatories.

8. Status of Memorandum of Understanding

This MOU reflects the intentions of the participants. It is not intended to create legal obligations of any nature, either in domestic or international law. The participants will however observe and give due respect to confidentiality undertakings which they have expressed in this MOU.

9. Effective date and review

This MOU will come into effect upon the date of signature of both signatories and will continue in effect until its termination in accordance with clause 11.

This MOU will be subject to formal annual review on each anniversary of its signing. In addition the content of the MOU will be reviewed to ensure that it remains relevant, for example in light of legislative changes.

This review will be conducted by the agency contacts shown under paragraph 10 and any required variations arising made in accordance with paragraph 7.

10. Agency contact

The liaison officers responsible for the administration of this MOU are:

- a) For HIQA, the persons holding the position of Chief Executive
- b) For the DPC, the persons holding the position of Data Protection Commissioner.

11. Termination

- a) Either participant may, at any time, give written notice of termination to the other participant. This MOU (excepting clause 5) will terminate six months after the date of receipt of the notice of termination.
- b) The termination of this MOU will not affect the confidentiality undertakings expresses by the participants in this MOU and any commitments given under or as a consequence of this MOU in respect of any arrangements or action taken during the period before the termination takes effect.

Signed in the *Dublin Regional Office* of the *Health Information and Quality Authority*

on this day of 2014

by. _____

for and on behalf of the Health Information and Quality Authority

on this day of 2014

by. _____

for and on behalf of the Office of the Data Protection Commissioner