



---

*Number 19 of 2008*

---

**MENTAL HEALTH ACT 2008**

---

ARRANGEMENT OF SECTIONS

Section

1. Interpretation.
  2. Expenses.
  3. Confirmation of unexpired renewal orders.
  4. Replacement renewal orders.
  5. Confirmation of expired renewal orders.
  6. Acts done or purporting to have been done pursuant to unexpired and expired renewal orders.
  7. Exclusions.
  8. Short title, collective citation and construction.
-

[No. 19.]

*Mental Health Act 2008.*

[2008.]

ACTS REFERRED TO

Mental Health Act 2001

2001, No. 25



---

*Number 19 of 2008*

---

**MENTAL HEALTH ACT 2008**

---

AN ACT TO CONFIRM CERTAIN UNEXPIRED AND EXPIRED RENEWAL ORDERS MADE UNDER SECTION 15(2) OR (3) OF THE MENTAL HEALTH ACT 2001; TO PERMIT SUCH UNEXPIRED RENEWAL ORDERS TO BE REPLACED BY ORDERS MADE UNDER THIS ACT; TO PROVIDE THAT SUCH NEW ORDERS SHALL TAKE EFFECT AS IF THEY WERE RENEWAL ORDERS MADE UNDER SECTION 15(2) OR (3) OF THE MENTAL HEALTH ACT 2001; AND TO PROVIDE FOR RELATED MATTERS.

[30th October, 2008]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

1.—(1) In this Act—

Interpretation.

“Act of 2001” means the Mental Health Act 2001;

“expired renewal order” means an order purporting to be a renewal order—

- (a) where the maximum period concerned specified in section 15(2) or (3) of the Act of 2001 by which it extended or further extended the period referred to in section 15(1) of that Act has, before the passing of this Act, expired, or
- (b) which has, before the passing of this Act, been revoked under the Act of 2001;

“replacement renewal order” means an order made under *section 4(1)(b)*;

“unexpired renewal order” means an order purporting to be a renewal order where the maximum period concerned specified in section 15(2) or (3) of the Act of 2001 by which it extended or further extended the period referred to in section 15(1) of that Act has not, before the passing of this Act, expired;

“working day” means a day which is not a Saturday, Sunday or public holiday.

(2) Section 2(1) of the Act of 2001 shall apply to the interpretation of this Act as it applies to the interpretation of that Act.

Expenses.

2.—The expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Finance, be paid out of moneys provided by the Oireachtas.

Confirmation of unexpired renewal orders.

3.—(1) An unexpired renewal order shall be deemed to be valid and always to have been valid notwithstanding either of the following matters:

- (a) that the consultant psychiatrist failed to consider when making the order that he or she had the discretion to extend or further extend the period referred to in section 15(1) of the Act of 2001 for a lesser period than the maximum period concerned specified in section 15(2) or (3) of that Act of 2001; or
- (b) that the order did not specify a period during which the order was to remain in force or a date on which the order was to expire.

(2) Subject to section 28 of the Act of 2001, an unexpired renewal order shall remain in force until—

- (a) the expiration of 5 working days immediately following the passing of this Act,
- (b) a replacement renewal order is made to replace the unexpired renewal order, or
- (c) the expiration of the last day of the maximum period concerned specified in section 15(2) or (3) of the Act of 2001 by which it extended or further extended the period referred to in section 15(1) of that Act,

whichever occurs first.

(3) Where a patient is the subject of an unexpired renewal order, the matters authorised under section 15(1) of the Act of 2001 by virtue of the admission order concerned shall continue to be authorised in respect of the patient for so long as the unexpired renewal order remains in force or, if the unexpired renewal order is replaced by a replacement renewal order, for so long as that replacement renewal order remains in force.

(4) Nothing in this section shall be construed as preventing an unexpired renewal order from being invalid by reason of matters other than the matters referred to in *subsection (1)*.

Replacement renewal orders.

4.—(1) Subject to *subsection (2)*, where a patient is the subject of an unexpired renewal order, the consultant psychiatrist responsible for the care and treatment of the patient, having carried out an examination of the patient after the passing of this Act but before the expiration of the 5 working days immediately following the passing of this Act shall, where he or she is satisfied by virtue of that examination that the patient continues to suffer from a mental disorder—

- (a) certify in a form specified by the Commission that the patient continues to suffer from a mental disorder, and

- (b) make an order replacing the unexpired renewal order in respect of the patient for a specified period not exceeding the period remaining unexpired, as at the date of the making of the order under this paragraph, of the maximum period concerned specified in section 15(2) or (3) of the Act of 2001 by which the unexpired renewal order extended or further extended the period referred to in section 15(1) of that Act.

(2) Subject to *subsections (3) to (5)*, a replacement renewal order shall be in substitution for, and not in addition to, the unexpired renewal order which it replaces and shall, for the purposes of the Act of 2001 and subject to the provisions of that Act, take effect as if it were—

- (a) a renewal order under section 15(2) of that Act in any case where that unexpired renewal order purports to be a renewal order made under that subsection, or
- (b) a renewal order under section 15(3) of that Act in any case where that unexpired renewal order purports to be a renewal order made under that subsection.

(3) Where an unexpired renewal order has been replaced by a replacement renewal order but, before that replacement, a tribunal has not reviewed, or has not completed its review, under section 18 of the Act of 2001 of the detention of the patient concerned arising from the making of that unexpired renewal order, then a step taken—

- (a) under sections 16 to 18 of the Act of 2001 by a person,
- (b) on or after the day on which the unexpired renewal order was made but before that replacement, and
- (c) arising from the making of the unexpired renewal order,

shall be deemed to be a step already taken—

- (i) under sections 16 to 18 of the Act of 2001 by the person concerned referred to in paragraph (a), and
- (ii) arising from the making of the replacement renewal order.

(4) Nothing in *subsection (3)* shall prejudice the taking of steps that are required to be taken under sections 16 to 18 of the Act of 2001 arising from the making of a replacement renewal order where those steps have not been deemed to have been taken by virtue of that subsection.

(5) Where an unexpired renewal order has been replaced by a replacement renewal order and, before that replacement, a tribunal has completed its review under section 18 of the Act of 2001 of the detention of the patient concerned arising from the making of the unexpired renewal order, then, notwithstanding the completion of such review, sections 16 to 19 of the Act of 2001 shall apply to the making of the replacement renewal order in the same manner as they apply to the making of a renewal order.

Confirmation of expired renewal orders.

5.—(1) An expired renewal order shall be deemed always to have been valid notwithstanding either of the following matters:

- (a) that the consultant psychiatrist failed to consider when making the order that he or she had the discretion to extend or further extend the period referred to in section 15(1) of the Act of 2001 for a lesser period than the maximum period concerned specified in section 15(2) or (3) of that Act; or
- (b) that the order did not specify a period during which the order was to remain in force or a date on which the order was to expire.

(2) An expired renewal order shall be deemed to have remained in force until—

- (a) the expiration of the maximum period concerned specified in section 15(2) or (3) of the Act of 2001 by which it extended or further extended the period referred to in section 15(1) of that Act, or
- (b) its revocation under section 28 of the Act of 2001,

whichever occurred first.

(3) Nothing in this section shall be construed as preventing an expired renewal order from having been invalid by reason of matters other than the matters referred to in *subsection (1)*.

Acts done or purporting to have been done pursuant to unexpired and expired renewal orders.

6.—(1) Every act done or purporting to have been done pursuant to an unexpired renewal order or an expired renewal order shall be deemed to be valid and effective and always to have been valid and effective notwithstanding either of the following matters:

- (a) that the consultant psychiatrist failed to consider when making the order that he or she had the discretion to extend or further extend the period referred to in section 15(1) of the Act of 2001 for a lesser period than the maximum period concerned specified in section 15(2) or (3) of that Act; or
- (b) that the order did not specify a period during which the order was to remain in force or a date on which the order was to expire.

(2) *Subsection (1)* shall not be construed as preventing an act referred to in that subsection from being invalid or ineffective by reason of matters other than the matters referred to in that subsection.

Exclusions.

7.—(1) Nothing in this Act shall prejudice any right or entitlement of a patient under or relating to section 28 of the Act of 2001.

(2) Nothing in this Act shall affect any proceedings commenced in any court concerning the validity of a renewal order or an order purporting to be a renewal order where those proceedings were commenced before the passing of this Act or any proceedings under section 19 of the Act of 2001.

[2008.]

*Mental Health Act 2008.*

[No. 19.]

8.—(1) This Act may be cited as the Mental Health Act 2008.

Short title,  
collective citation  
and construction.

(2) The Mental Health Act 2001 and this Act may be cited together as the Mental Health Acts 2001 and 2008.

(3) The Mental Health Act 2001 and this Act shall be construed together as one.