

# PROJET DE LOI

ENTITLED

## **The Armed Forces (Offences and Jurisdiction) (Bailiwick of Guernsey) Law, 2018**

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## **The Armed Forces (Offences and Jurisdiction) (Bailiwick of Guernsey) Law, 2018**

THE STATES, in pursuance of their Resolution of the 26<sup>th</sup> day of September 2013<sup>a</sup>, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Bailiwick of Guernsey.

### PART 1

#### JURISDICTION OF SERVICE COURTS AND AUTHORITIES

##### **Exercise of powers by service courts and authorities.**

1. (1) Subject to the provisions of –
  - (a) this Law, and
  - (b) any protocol entered into under section 2,

service courts and service authorities may within Guernsey exercise over persons falling within subsection (2) all the powers that are exercisable by them in the United

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<sup>a</sup> Article III of Billet d'État No. XVIII of 2013.

Kingdom under the Armed Forces Act and the Reserve Forces Acts in relation to those persons.

- (2) A person falls within this subsection if that person –
  - (a) is subject to service law,
  - (b) is a civilian subject to service discipline, or
  - (c) has ceased to be subject to service law or a civilian subject to service discipline, but may be charged with a service offence committed while he or she was so subject,

and such a person is referred to in this Law as a person subject to forces powers.

(3) Without prejudice to the generality of subsection (1), the powers that may be exercised under that subsection include any powers exercisable by service courts and service authorities under the Armed Forces Act and the Reserve Forces Acts to detain a person, in service custody or otherwise.

(4) Where any sentence has, whether within or outside Guernsey, been passed by a service court, or summarily by an officer, on a person who immediately before the passing of that sentence was subject to the jurisdiction of that court or officer in accordance with this section, then for the purposes of any proceedings in a local court –

- (a) that service court is deemed to have been properly constituted, and

(b) the sentence is deemed to be within the jurisdiction of that court or officer, as the case may be.

(5) In this section, "sentence" shall be construed in accordance with section 376 of the Armed Forces Act, and "local court" means any court sitting in Guernsey other than a service court.

**Police operational protocols.**

2. (1) For the avoidance of doubt the Chief Officer may, on behalf of the Island Police Force, enter into operational protocols with one or more of the service police forces governing the exercise in Guernsey of powers that arise under Part 3 of the Armed Forces Act (including powers that arise under regulations made under that Part), and the Police and Criminal Evidence Act (1984) (Armed Forces) Order 2009<sup>b</sup>.

(2) The Committee for Home Affairs may by regulations amend subsection (1) by adding to, or otherwise amending, the references to legislation contained therein.

**Authorisation of entry into premises.**

3. (1) Subject to section 4, no person may enter and search premises in exercise of powers under section 1(1) except a service policeman in accordance with the provisions of this section.

(2) A service policeman may only enter and search premises in exercise of powers under section 1(1) where –

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<sup>b</sup> United Kingdom S.I. 2009 No. 1922.

- (a) a warrant authorising the entry and search has been issued by a judge advocate,
- (b) an application to execute that warrant has been granted by a judge,
- (c) a service policeman has consulted the Chief Officer about the warrant's execution,
- (d) the Chief Officer has notified the relevant service police force that the Chief Officer considers that the condition in subsection (4) is satisfied.

(3) A judge may grant an application to execute a warrant issued by a judge advocate only where he or she is satisfied that –

- (a) there were reasonable grounds for granting the warrant, and
- (b) the Chief Officer has been given reasonable notice of the application and has had the opportunity to make representations, either orally or in writing.

(4) At any point before the warrant is executed the Chief Officer may make demands of the relevant service police force relating to its execution; and the condition referred to in subsection (2)(d) is that any such demands have been, or will be, complied with.

(5) For the avoidance of doubt and without limitation, the Chief Officer may demand under subsection (4) that the service policeman executing the warrant be accompanied by such police officers (if any) as the Chief Officer may specify.

(6) For the avoidance of doubt, sections 10 (search warrants – safeguards) and 11 (execution of warrants) of the Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law, 2003<sup>c</sup> ("PPACE") apply in relation to the issue and execution of a warrant under this section.

(7) In this section –

(a) "**judge**" means–

(i) where the warrant is to be executed in Alderney, the Chairman or a Jurat of the Court of Alderney, or the Bailiff,

(ii) where the warrant is to be executed in Sark, the Seneschal, or the Bailiff, and

(iii) in any other case, the Bailiff.

(b) "**premises**" includes any place and in particular any tent, vehicle or movable structure, but excludes Her Majesty's ships and Her Majesty's aircraft,

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<sup>c</sup> Order in Council No. XXIII of 2003; as amended by Order in Council No. XVI of 2009, No. XV of 2011 and Ordinance No. XXXIII of 2003, No. XXIX of 2011, No. XXXIX of 2015 and No. IX of 2016.

- (c) "**relevant service police force**" means the service police force of the service policeman who will execute the warrant, and
- (d) "**Her Majesty's ships and Her Majesty's aircraft**" means all ships and aircraft belonging to or used for the purposes of any of Her Majesty's forces.

**Authorisation of entry into premises: saving provision.**

- 4. (1) Nothing in section 3 affects –
  - (a) any power of a commanding officer, otherwise than in connection with the investigation of a service offence or the exercise of any power of arrest, to enter and search, or order the entry and search of, premises which are occupied for the purposes of any of Her Majesty's forces,
  - (b) any power of a commanding officer, otherwise than in connection with the investigation of a service offence or the exercise of any power of arrest, to search, or order the search of, a person or to stop and search, or order the stop and search of, a service vehicle, or
  - (c) any power of a service policeman or commanding officer to search, or order the search of, a service vehicle which is not in the charge of any person, or

which is in the sole charge of a person subject to forces powers.

(2) In subsection (1) "**service vehicle**" means a vehicle which –

(a) belongs to any of Her Majesty's forces, or

(b) is in use for the purposes of any of those forces.

**Service proceedings barring subsequent civilian proceedings.**

5. (1) This section applies to a person who –

(a) has been convicted or acquitted of an offence under section 42 of the Armed Forces Act, or

(b) has had such an offence taken into consideration when being sentenced under that Act.

(2) A civilian court may not try that person for any offence for which, under the law of Guernsey, it would be debarred from trying the person if the person had been convicted, or (as the case may be) acquitted, of the relevant offence by a civilian court.

(3) In subsection (2), "**relevant offence**" means the offence under the law of Guernsey which the act (or alleged act) constituting the offence under section 42 of the Armed Forces Act amounted to.

(4) In subsection (1), the references to a person being convicted, acquitted or sentenced under the Armed Forces Act are to be read in accordance

with section 376 of that Act.

**Choice of jurisdiction.**

6. (1) This section applies to a person subject to forces powers who—
  - (a) is suspected of an act that constitutes both a service offence and a civilian offence, and
  - (b) is not protected from prosecution for that civilian offence by section 5.
  
- (2) Her Majesty's Procureur may, in respect of such a person issue a certificate that –
  - (a) specifies a period during which it is valid and states that he or she is considering whether it is more appropriate for the person to be dealt with for the civilian offence, or
  - (b) states that he or she has decided that it is more appropriate for the person to be dealt with for the civilian offence.
  
- (3) If a certificate is issued under subsection (2), a service court and a service authority may not take any step (during the period of the certificate's validity, if issued under paragraph (a)) that would prejudice or obstruct the investigation and prosecution of the civilian offence.

(4) Without prejudice to the generality of subsection (3), and irrespective of whether the person is in service custody, the steps that may not be taken include –

- (a) obstructing access to the person by a police officer,
- (b) obstructing the production of the person to a civilian court dealing with his or her prosecution for the civilian offence,
- (c) removing the person from Guernsey, or
- (d) starting proceedings for the service offence.

(5) In this section, "**civilian offence**" means an offence under the law (other than this Law) of the island of Guernsey, the island of Alderney or the island of Sark, as the case may be, depending on where the act referred to in subsection (1) is alleged to have been committed.

**Detention pending decision as to jurisdiction.**

7. (1) PPACE is amended as follows.

(2) In section 42(2), immediately after "unless" insert "section 42A applies, or unless".

(3) In section 42(7), immediately after "subject to" insert "section 42A and".

(4) Immediately after section 42, insert a new section –

**"Detention before charge of person subject to forces powers."**

42A. (1) For the avoidance of doubt, section 48 (Limits on period of detention without charge) applies in respect of the detention of a person under this section, and this section shall be construed accordingly.

(2) This section applies where a person is arrested for an offence and the custody officer where the person is detained after arrest has reasonable grounds for believing that he or she is a person subject to forces powers.

(3) Where this section applies, in addition to authorising that a person be kept in police detention without charge under section 42, the custody officer may also authorise that the person be kept in police detention without charge if, and only for so long as, the conditions in subsections (4) and (5) are satisfied in relation to that person.

(4) The condition in this subsection is that the custody officer has reasonable grounds for believing that enquiries are being conducted diligently and expeditiously into –

- (a) whether the person is a person subject to forces powers,
- (b) if the person is, whether a service authority intends to investigate the person for any service offence constituted by the offence for which he or she was arrested,

- (c) if so, whether and for what reasons a service authority wishes to request the person's delivery into service custody for the purpose of that investigation, and
- (d) if so, whether Her Majesty's Procureur wishes to accede to that request.

(5) The condition in this subsection is that the custody officer has reasonable grounds for believing that the person's detention is necessary –

- (a) to enable those enquiries to be completed, or
- (b) to ensure that a decision can be made and carried out as to whether the person is delivered into service custody.

(6) In this section, "**person subject to forces powers**", "**service authorities**", "**service offence**" and "**service custody**" have the same meaning as in the Armed Forces (Offences and Jurisdiction) (Bailiwick of Guernsey) Law, 2018."

## PART 2

### DESERTION AND ABSENCE WITHOUT LEAVE

#### **Interpretation of Part 2.**

8. In this Part "**unlawful absentee**" means a person who is subject to service law who has deserted or who is absent without leave.

**Aiding or abetting etc. desertion or absence without leave.**

9. (1) A person commits an offence if the person aids, abets, counsels or procures the commission by another person of an offence under section 8 (desertion) or 9 (absence without leave) of the Armed Forces Act.

(2) A person ("A") commits an offence if –

(a) A knows that another person ("B") is subject to service law,

(b) A does an act intending to cause B to be absent without leave, and

(c) it causes B to be absent without leave.

(3) A commits an offence if -

(a) another person ("C") has committed an offence under section 8 or 9 of the Armed Forces Act,

(b) A knows or believes C to be guilty of that offence, and

(c) A does an act intending to impede C's apprehension or prosecution.

(4) Subsections (1) to (3) apply to any aiding, abetting, counselling or procuring, or (as the case may be) any act, done -

(a) in Guernsey, or

(b) elsewhere when A is ordinarily resident in Guernsey.

(5) In subsection (2) (and subsection (4) so far as relating to that subsection) "act" includes an omission, and the references to the doing of an act are to be read accordingly.

(6) A person guilty of an offence under this section is liable -

(a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding level 5 on the uniform scale, or to both, and

(b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or to both.

**Aiding or abetting etc. malingering.**

10. (1) A person ("D") commits an offence if D aids, abets, counsels or procures the commission by another person of an offence under section 16 of the Armed Forces Act (malingering).

(2) D commits an offence if -

(a) D knows that another person ("E") is subject to service law, and

(b) intending to cause E to avoid service, by any act D -

(i) causes E an injury, or

(ii) aggravates or prolongs any injury of E's.

(3) D commits an offence if -

(a) D knows that a person ("F") is subject to service law,  
and

(b) intending to cause F to avoid service, by any act D -

(i) causes F to believe that F has an injury, or

(ii) causes another person to believe that F has an  
injury.

(4) Subsections (1) to (3) apply to any aiding, abetting, counselling  
or procuring, or (as the case may be) any act, done -

(a) in Guernsey, or

(b) elsewhere when D is ordinarily resident in Guernsey.

(5) In subsections (2), (3) and (4) "**act**" includes an omission, and  
the references to the doing of an act are to be read accordingly.

(6) In this section "**injury**" and "**service**" have the same meanings  
as in section 16 of the Armed Forces Act.

(6) A person guilty of an offence under this section is liable on conviction to imprisonment for a term not exceeding two years or to a fine not exceeding level 5 on the uniform scale, or to both.

**Obstructing persons subject to service law in course of duty.**

11. (1) A person commits an offence if -
- (a) the person intentionally obstructs a person ("G"),
  - (b) G is a person subject to service law acting in the course of his or her duty, and
  - (c) the person knows or has reasonable cause to believe that G is subject to service law.

(2) A person guilty of an offence under this section is liable on conviction to imprisonment for a term not exceeding twelve months, or to a fine not exceeding level 3 on the uniform scale, or to both.

**Arrest of deserters and absentees without leave.**

12. (1) A police officer may arrest without warrant a person reasonably suspected of being an unlawful absentee.

(2) Subject to subsection (3), a person arrested under this section must as soon as practicable be transferred to service custody and in any case within 48 hours after being arrested; and if necessary, the person must be committed in custody in a police station, or a designated place of detention within the meaning of PPACE, by the officer in charge of the police station, or a person authorised by that officer, pending that transfer.

(3) Where on an application on oath made by a police officer, a Judge of the Magistrate's Court (or, if no Judge of the Magistrate's Court is available, the Bailiff) is satisfied that there are reasonable grounds for believing that the further detention of the person to whom the application relates is justified pending that person's transfer to service custody, he or she may issue a warrant authorising the further detention of that person for such further period not longer than 36 hours as he or she thinks fit.

**Deserters and absentees without leave surrendering to police.**

13. (1) This section applies if a person surrenders to a police officer as being an unlawful absentee.

(2) If the surrender occurs at a place which is not a police station, the person must be taken to a police station.

(3) If it appears to the officer in charge of a police station, or a person authorised by that officer, that the person is not an unlawful absentee, he or she must order that the person should no longer be detained under this section (without prejudice to whether the person is to continue to be detained on any other basis).

(4) If it appears to the officer in charge of a police station, or a person authorised by that officer, that the person is an unlawful absentee, he or she must –

(a) arrange for the person to be transferred to service custody, and, if necessary, commit the person in custody in a police station, or a designated place of

detention within the meaning of PPACE, pending that transfer, or

- (b) if the person is also in custody for some other cause, notify a service authority, or
- (c) if the person is not also in custody for some other cause, release the person subject to a condition that the person reports, at or by such time as may be specified in the condition, to such place or person as may be so specified for the purpose of enabling the person to be taken into service custody.

(5) If a person who is released under subsection (4)(c) fails to comply with the condition subject to which the person was released, a Judge of the Magistrate's Court (or, if no Judge of the Magistrate's Court is available, the Bailiff) may issue a warrant for the person's arrest.

(6) A person arrested under a warrant issued under subsection (5) must as soon as practicable be transferred to service custody.

**Arrest by police of persons unlawfully at large.**

**14.** A person who has been sentenced to service detention and who is unlawfully at large –

- (a) may be arrested without a warrant by a police officer, and

- (b) may be taken to the place in which the person is required in accordance with law to be detained.

### PART 3

#### MISCELLANEOUS AND SUPPLEMENTARY

##### **Detention in prison.**

15. A person in service custody may be detained in a prison if –

- (a) the service authority with custody of the person requests that the person be so detained,
- (b) the governor of the prison, at the governor's discretion, consents to the request, and
- (c) the detention is pending the person's removal from Guernsey –
  - (i) for the purposes of the investigation of, or proceedings in respect of, a suspected service offence, or
  - (ii) following the person's conviction of a service offence.

##### **Arrest by police under warrant of judge advocate.**

16. A police officer must, on making an arrest in execution of a warrant issued under section 313 of the Armed Forces Act, as extended to Guernsey by the Armed Forces Act 2006 (Bailiwick of Guernsey) Order 2018 –

- (a) show the warrant to the arrested person, or state where the warrant is and what arrangements may be made to allow the arrested person to inspect it,
- (b) explain in ordinary language the reason for the arrest, and
- (c) unless the police officer is a constable in uniform, produce documentary proof of the police officer's identity.

**Offence relating to enlistment.**

17. (1) A person commits an offence if the person knowingly gives a false answer during a procedure for enlistment into Her Majesty's forces.

(2) A person guilty of an offence under this section is liable on conviction to a fine not exceeding level 5 on the uniform scale.

**Evidence in civilian courts.**

18. Regulations 2, and 4 to 11, of the Armed Forces (Evidence in Proceedings before Civilian Courts) Regulations 2009<sup>d</sup> shall have effect with respect to evidence in proceedings for an offence created by or under this Law before a civilian court.

**Exemption of items used for service purposes from arrest and distraint.**

19. (1) In this section "exempt item" means any weapon, equipment, instrument or clothing that –

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<sup>d</sup> United Kingdom S.I. 2009 No. 1112.

- (a) is the property of the Crown, or
  - (b) is the property of a member of Her Majesty's forces and used by that member in the course of his or her duty.
- (2) An exempt item is not subject to arrest or distraint.

PART 4  
FINAL PROVISIONS

**Power to make consequential amendments.**

20. (1) The States of Deliberation may by Ordinance amend and repeal other enactments consequent on –

- (a) the coming into force of this Law,
- (b) the coming into force of any provisions of, or any amendment of the Armed Forces Act or any instrument made under it, or
- (c) any repeal of the Army Act 1955 (Bailiwick of Guernsey) Order 1996<sup>e</sup>, the Naval Discipline Act 1957 (Bailiwick of Guernsey) Order 1996<sup>f</sup>, or the Air Force

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<sup>e</sup> United Kingdom S.I. 1996 No.722.

<sup>f</sup> United Kingdom S.I. 1996 No.726.

Act 1955 (Bailiwick of Guernsey) Order 1996<sup>8</sup>.

- (2) An Ordinance or regulations under this Law –
  - (a) may be amended or repealed by a subsequent Ordinance or regulation, as the case may be, hereunder, and
  - (b) may contain such consequential, incidental, supplementary, transitional and savings provisions as may appear to be necessary or expedient including, without limitation, provisions repealing, amending or modifying any enactment (whether passed before or after the commencement of this Law).

(3) Any power conferred by this Law to make any Ordinance, or regulations may be exercised -

- (a) in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified cases or classes of cases, and
- (b) so as to make, as respects the cases in relation to which it is exercised -

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<sup>8</sup> United Kingdom S.I. 1996 No.718.

- (i) the full provision to which the power extends, or any lesser provision (whether by way of exception or otherwise),
- (ii) the same provision for all cases, or different provision for different cases or classes of cases, or different provision for the same case or class of case for different purposes,
- (iii) any such provision either unconditionally or subject to any prescribed conditions.

(4) Regulations under this Law shall be laid before a meeting of the States as soon as possible after being made; and, if at that or the next meeting the States resolve that the regulations be annulled, then they shall cease to have effect, but without prejudice to anything done under them or to the making of new regulations.

**Interpretation.**

21. (1) Any reference in this Law to an enactment, a United Kingdom Statutory Instrument or an Act of Parliament is a reference thereto as from time to time amended or re-enacted (with or without modification), extended or applied.

(3) In this Law, unless the context otherwise requires –

**"Armed Forces Act"** means the Armed Forces Act 2006<sup>h</sup>,

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<sup>h</sup> An Act of Parliament (c. 52).

"**Bailiff**" includes the Deputy Bailiff, a Lieutenant Bailiff, the Juge-Délégué and a Judge of the Royal Court,

"**Chief Officer**" means the Chief Officer of the Island Police Force,

"**civilian court**" means any court exercising a criminal jurisdiction in Guernsey, other than a service court,

"**the Committee for Home Affairs**" means the States Committee for Home Affairs,

"**enactment**" means a Law, Ordinance and any subordinate legislation and includes any provision or portion of a Law, an Ordinance or any subordinate legislation,

"**Guernsey**" means the Bailiwick of Guernsey and the territorial waters adjacent thereto,

"**Her Majesty's Procureur**" includes Her Majesty's Comptroller,

"**Island Police Force**" means the salaried police force of the island of Guernsey,

"**Judge of the Magistrate's Court**" has the meaning given in the Magistrate's Court (Guernsey) Law, 2008<sup>i</sup>, and includes a Deputy Judge of the Magistrate's Court within the meaning of that Law,

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<sup>i</sup> Order in Council No. XVIII of 2009; amended by Ordinance XXII of 2009.

"**person subject to forces powers**" has the meaning given by section 1(2),

"**police officer**" means -

- (a) in relation to the islands of Guernsey, Herm and Jethou, a member of the Island Police Force and, within the limits of his or her jurisdiction, a member of the special constabulary of the island of Guernsey,
- (b) in relation to Alderney, a member of the Island Police Force, a member of any police force which may be established by the States of Alderney, and within the limits of his or her jurisdiction, a special constable appointed pursuant to section 47 of the Government of Alderney Law, 2004<sup>j</sup>,
- (c) in relation to Sark, the Constable, the Assistant Constable, the Vingtenier, a member of the Island Police Force, and within the limits of his or her jurisdiction, a special constable appointed pursuant to section 54 of the Reform (Sark) Law, 2008<sup>k</sup>,

"**PPACE**": see section 3(6),

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<sup>j</sup> Order in Council No. III of 2005 as amended by Order in Council No. XXII of 2010, No. XI of 2012 and No. V of 2014 and by Alderney Ordinance No. IX of 2016.

<sup>k</sup> Order in Council No. V of 2008 as amended by Order in Council No. VI of 2008, No. XXVII of 2008, No. XIV of 2010, No. XII of 2011, No. XI of 2014, No. IX of 2016 and Sark Ordinance No. II of 2015, No. VI of 2015 and No. XI of 2017.

"**Reserve Forces Acts**" means the Reserve Forces Act 1980<sup>1</sup> and the Reserve Forces Act 1996<sup>m</sup>,

"**Seneschal**" means the Seneschal of Sark, the Deputy Seneschal or a Lieutenant Seneschal;

"**service authority**" means a service policeman (including a provost officer), an officer, a judge advocate, the Director of Service Prosecutions, and a prosecuting officer,

"**service court**" means –

- (a) the Court Martial, the Summary Appeal Court, the Service Civilian Court or the Court Martial Appeal Court established by the Armed Forces Act, or
- (b) the Supreme Court of the United Kingdom, on an appeal brought from the Court Martial Appeal Court,

"**service custody**" means the custody of, or custody authorised by, a service authority or service court,

"**subordinate legislation**" means any regulation, rule, order, rule of court, Resolution, scheme, direction, byelaw or other instrument made under any enactment and having legislative effect, but does not include an Ordinance,

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<sup>1</sup> An Act of Parliament (c.9).

<sup>m</sup> An Act of Parliament (c.14).

"**uniform scale**" means the scale of fines under the Uniform Scale of Fines (Bailiwick of Guernsey) Law, 1989<sup>n</sup>, and

"**United Kingdom**" includes any part of the United Kingdom.

(4) In this Law, "**judge advocate**", "**officer**", "**commanding officer**", "**subject to service law**", "**service detention**", "**provost officer**", "**Director of Service Prosecutions**", "**prosecuting officer**", "**Service Complaints Commissioner**", "**ship**", "**aircraft**", "**service police force**", "**service policeman**", "**civilian subject to service discipline**", "**service offence**", "**absence without leave**" and "**desertion**" (and related phrases) have the same meanings as in the Armed Forces Act.

#### **Citation and commencement.**

22. (1) This Law may be cited as the Armed Forces (Offences and Jurisdiction) (Bailiwick of Guernsey) Law, 2018.

(2) This Law shall come into force on a day appointed by Ordinance of the States, and such Ordinance may appoint different days for different provisions and different purposes.

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<sup>n</sup> Ordres en Conseil Vol. XXX, p. 278.