

# STATES OF JERSEY



## DRAFT ARMED FORCES (OFFENCES AND JURISDICTION) (JERSEY) LAW 201-

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Lodged au Greffe on 6th June 2017  
by the Minister for Home Affairs

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STATES GREFFE





Jersey

## **DRAFT ARMED FORCES (OFFENCES AND JURISDICTION) (JERSEY) LAW 201-**

### **European Convention on Human Rights**

In accordance with the provisions of Article 16 of the Human Rights (Jersey) Law 2000, the Minister for Home Affairs has made the following statement –

In the view of the Minister for Home Affairs, the provisions of the Draft Armed Forces (Offences and Jurisdiction) (Jersey) Law 201- are compatible with the Convention Rights.

Signed: **Deputy K.L. Moore of St. Peter**

*Minister for Home Affairs*

Dated: 2nd June 2017

## REPORT

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The proposed *Armed Forces (Offences and Jurisdiction) (Jersey) Law 201-* (“the proposed Law”) makes provision for the treatment of British armed forces and those visiting from other countries when they are in Jersey, particularly in relation to discipline and justice. The proposed Law also establishes appropriate powers for the Jersey police and courts in relation to deserters and others, creates civilian offences in relation to the armed forces, protects the pay and equipment of the armed forces from action in Jersey courts, and enables the States Assembly by Regulations to amend legislation to provide for the use of vehicles and roads by the armed forces.

### Background

The United Kingdom *Visiting Forces Act 1952* was introduced in order to make provision with respect to naval, military and air forces of other countries visiting the United Kingdom, and to provide for the apprehension and disposal of deserters or absentees without leave in the United Kingdom from the forces of such countries. This Act has never applied or been extended to the Channel Islands.

The United Kingdom *Armed Forces Act 2006* introduced a harmonised system of statutory service law governing all the armed forces. The Act repealed the Army Act 1955, Air Force Act 1955 and Naval Discipline Act 1957. These 3 earlier Acts had always applied directly to the Channel Islands.

During the development of what was to become the *Armed Forces Act 2006*, demi-official discussions were held with the Legal Advisers of the (then) Department for Constitutional Affairs and the Ministry of Defence as to the most appropriate approach to be taken by the Channel Islands. It was agreed that that matters pertaining to criminal law, the courts and the civilian authorities of the Islands should be the subject of insular legislation, but that those provisions of the Act which might require legislative force in the Islands, but did not pertain to the domestic authorities and local criminal law directly, could be extended by Order in Council. It was also agreed that the basic legal validity of the armed forces should be established by local legislation on lines similar to relevant provisions of the *Visiting Forces Act 1952*. This position was considered by the Policy and Resources Committee in October 2005 and confirmed with Her Majesty’s Government through official channels in November 2005. It was left to subsequent considerations to establish which provisions ought to be carried into effect in the Islands by domestic law and which might require extension by Order in Council.

Since then, the proposed Law has been developed in stages over a number of years, with the Law Draftsmen’s Office and the Law Officers’ Department co-ordinating their work with counterparts in Guernsey, and seeking informal comments from Her Majesty’s Government throughout this period as drafts were able to be progressed. More recently, the Minister for Home Affairs asked that officers bring their work on this Law to a conclusion so that a final draft Law could be proposed to the States Assembly before the summer of 2017. This final draft Law would make provision in Jersey law for a system of discipline and justice which can operate in the Island without the need to be supplemented by an Order in Council.

The proposed Law has been developed into a final form over the last 18 months with the support of the Law Officers’ Department and in consultation with the Magistrate and the Police. Drafts have also been shared with the Office of the Lieutenant-

Governor, the Jersey Field Squadron, counterparts in Guernsey, and informally with Her Majesty's Government.

### **Regulations**

If the proposed Law is adopted by the Assembly, then the Minister for Home Affairs would request that work is commenced to develop the draft Regulations to amend Laws relating to the use of motor vehicles by the armed forces, in order that these draft Regulations could be lodged later in the year for consideration by the Assembly.

### **Collective responsibility under Standing Order 21(3A)**

The Council of Ministers has a single policy position on this proposition, and as such, all Ministers, and the Assistant Minister for Home Affairs, are bound by the principle of collective responsibility to support the proposition, as outlined in the Code of Conduct and Practice for Ministers and Assistant Ministers ([R.11/2015](#) refers).

### **Financial and manpower implications**

There are no financial or manpower implications for the States arising from the adoption of this draft Law.

### **Human Rights**

The notes on the human rights aspects of the draft Law in the **Appendix** have been prepared by the Law Officers' Department and are included for the information of States Members. They are not, and should not be taken as, legal advice.

## APPENDIX TO REPORT

### Human Rights Notes on the Draft Armed Forces (Offences and Jurisdiction) (Jersey) Law 201-

These Notes have been prepared in respect of the Draft Armed Forces (Offences and Jurisdiction) (Jersey) Law 201- (the “**draft Law**”) by the Law Officers’ Department. They summarise the principal human rights issues arising from the contents of the draft Law and explain why, in the Law Officers’ opinion, the draft Law is compatible with the European Convention on Human Rights (“**ECHR**”).

**These notes are included for the information of States Members. They are not, and should not be taken as, legal advice.**

The draft Law will make provision in Jersey law for the treatment of Her Majesty’s Armed Forces when in Jersey. It also makes provision in Jersey law for the treatment of other armed forces when in Jersey, based on the equivalent treatment of those forces when visiting the United Kingdom, under the Visiting Forces Act 1952. In particular, it makes provisions for home and visiting forces authorities to exercise in Jersey the powers they have for the time being under the forces law of their country, including powers to detain and remove from Jersey persons over whom they have jurisdiction. It also gives the civilian police additional grounds and powers of detention and creates civilian offences relating to interference with the operation of forces discipline and justice.

The draft Law engages various Articles of the ECHR, which are addressed in turn.

Part 2 of the draft Law provides jurisdiction in Jersey for the authorities and courts of the home forces, and relates that to the jurisdiction of Jersey’s civilian authorities and courts. It also provides similar jurisdiction for authorities and courts of forces of other countries visiting Jersey in certain circumstances. It enables police forces, courts and other authorities to exercise in Jersey the powers they have for the time being under UK forces law or, in respect of the forces of other countries, the relevant law of their country.

Article 2 provides for the exercise in Jersey of the powers that may be exercised under UK forces law by service courts and authorities in the UK over the following individuals: service persons, persons liable under forces law to prosecution for alleged forces offences committed while a service person, and to persons who are not service persons but who are reasonably believed to be service persons by a service authority.

The powers granted under Article 2 are those exercisable in the UK under forces law, which comprises the Armed Forces Act 2006 (“AFA 2006”), the Reserve Forces Act 1980, the Reserve Forces Act 1996, section 113 of the Police and Criminal Evidence Act 1984, and all subsidiary enactments. Article 2(5)(a) expressly states that the powers granted are to include powers available under UK forces law “to detain a person, in service custody or otherwise” and “to remove a person from Jersey” (our emphasis) and thus directly engages the right to liberty under Article 5 ECHR. UK forces law also grants a number of other powers to service courts and authorities which engage ECHR rights, including powers to search, to conduct alcohol- and

drugs-testing, to seize property, to convene courts martial, and to convict and sentence. As such, Article 2 potentially engages a number of ECHR rights.

The UK's Human Rights Act 1998 ("HRA 1998") gives effect to the UK's responsibilities as an ECHR signatory state, making it illegal for public authorities to act in a way that is incompatible with human rights (section 6(1) HRA 1998) and requiring that all UK legislation be read and given effect to in a way that is compatible with human rights, absent any express provision to the contrary (section 3(1) HRA 1998). Similar provision is made in Articles 4 and 7 of the Human Rights (Jersey) Law 2000 ("HRL 2000") ensure that the powers of public authorities under Jersey law must be exercised only in a way that is compatible with human rights. These provisions will ensure that UK forces authorities are required to exercise these powers in a manner that is compatible with the ECHR.

Further assurance that any exercise of powers under UK forces law pursuant to Article 2 of the draft Law will be ECHR-compatible can be gained from the fact that the passing of the Armed Forces Bill 2005–06 and subsequent amending legislation has been accompanied by reviews of ECHR compatibility conducted by UK government lawyers, and statements of ECHR compatibility have been made in both Houses of Parliament with respect to the renewal of the AFA 2006. Thus in respect of powers available under UK forces law, the UK legal system incorporates safeguards against the law providing unwittingly for human rights violations in the powers it authorises.

Article 3 makes similar provision to Article 2, but this time in relation to visiting forces of countries other than the UK. The countries are those for the time being covered by section 1(1)(a) of the Visiting Forces Act 1952 and designated by any enactment of the UK under section 1(2) as a country to which section 2 applies. Where jurisdiction is authorised in respect of a listed country's forces authorities, those authorities may within Jersey exercise all the powers exercisable by them over the relevant forces persons according to the relevant law of their country. An additional consideration with Article 3 and ECHR compatibility is that several of the countries in respect of which authorisation to exercise jurisdiction in Jersey may be granted are not ECHR signatory states. As such, the draft Law provides a different mechanism by forces of these countries come to be authorised to exercise powers over members of their forces in Jersey.

First, the visiting force must have been invited by one of the home (UK) forces and the visit must be covered by an authorization from the Minister for Home Affairs ("the Minister"). Jurisdictional authorization may be granted only once the Minister has considered any relevant international agreements about visiting forces and is satisfied that it is likely that the visiting force will not act incompatibly with any ECHR rights. The Minister also has a power under Article 3(5)(c) to attach a condition limiting the powers that may be exercised by the visiting forces authorities in Jersey.

These mechanisms enable Jersey to refuse to grant a jurisdiction authorization to visiting forces authorities over their members where the Minister foresees a significant risk of a power provided by Article 3 of the draft Law being exercised in Jersey in a manner that is not compatible with the ECHR. The Minister may also attach conditions to an authorization to control such a risk. In view of these safeguards, Article 3 of the draft Law is compatible with the ECHR.

## **Article 5 – Right to Liberty and Security**

Article 5 ECHR protects the physical liberty and security of the person. Its aim is to ensure that no-one is deprived of their liberty in an arbitrary or unjustified fashion. Article 5(1) ECHR permits a deprivation of liberty in a number of specific cases, and where that deprivation is lawful and in accordance with a procedure prescribed by law. The exceptions relevant to the draft Law are, firstly, two situations in which detention may be justified as part of the criminal process (the imprisonment of someone as a penalty for having committed an offence (Article 5(1)(a) ECHR) and the apprehension of someone suspected of involvement in committing an offence (Article 5(1)(c) ECHR)) and, secondly, the arrest or detention of someone to secure the fulfilment of a legal obligation (Article 5(1)(b) ECHR).

Article 6(4) and (5) of the draft Law provide additional grounds under the Police Procedures and Criminal Evidence (Jersey) Law 2003 (“PPACE 2003”) for police detention, before charge, of suspects in respect of whom there are reasonable grounds for believing they are subject to forces powers. Article 6 concerns police detention, and so the Article 5 ECHR requirement that detention be carried out in accordance with a procedure prescribed by law is satisfied, as the relevant procedure is codified by the Police Procedures and Criminal Evidence (Jersey) Law 2003 (“PPACE 2003”) and subsidiary enactments, such as the Police Procedures and Criminal Evidence (Codes of Practice) (Jersey) Order 2004 (“PPACE CoP 2004”).

The Article 5(1)(c) ECHR exception authorises lawful arrest or detention for the purpose of bringing a person before the competent legal authority on reasonable suspicion of having committed a criminal offence. As such, detention in the circumstances described in Article 6 of the draft Law pending a decision as to jurisdiction is within scope of Article 5(1)(c) ECHR.

Article 5(1)(c) ECHR requires that the purpose of apprehending the suspect must be to bring him or her before the “competent legal authority”. This aligns with the purpose of detention on the grounds provided by Article 6, which is to enable a decision to be made as to which jurisdiction – civilian or forces – is most appropriate to deal with the act on suspicion of which the relevant suspect has been detained.

Article 5(1)(c) ECHR also requires the suspicion about the commission of the offence to be “reasonable”, and Article 6(1) of the draft Law provides that detention on Article 6 grounds is only in respect of persons already in police detention and suspected of a civilian offence. In Jersey an individual may only be arrested – a necessary precursor of police detention – where a police officer has “reasonable cause” to suspect that the person has committed, is committing or is about to commit an offence.

Article 5(1)(c) ECHR must be read in conjunction with Article 5(3) ECHR, which provides additional protection for detained persons, and as such, detention under Article 6 must automatically entail the individual being brought promptly before a judge or other officer authorised by law to exercise judicial power to be ECHR-compatible.

The authority supervising detention must be independent of the investigating and prosecuting authorities. The purpose of Article 6 detention is to progress the individual’s case through the Jersey court system, or to transfer the individual to service custody in order that he or she may be dealt with by the services justice system. Jersey’s domestic court system will constitute a competent legal authority for ECHR purposes. Based on similar assumptions, and for the same reasons, as above in relation to the assessment for ECHR-compatibility of home and visiting forces laws

(regarding Articles 2 and 3 of the draft Law), the courts and judicial systems of both home and visiting forces are presumed to amount to competent legal authorities.

Even before delivery to the appropriate court system for the purpose of pursuing the action against the suspect, an individual detained under Article 6 of the draft Law will have his or her detention supervised by a custody officer under PPACE 2003. To comply with the ECHR, judicial supervision of detention must be impartial. In police detention a review officer is responsible for determining whether or not detention continues to be necessary. Custody officers are in charge of supervising police detainees and PPACE CoP 2004 prescribes that custody officers must not be involved in investigating the offence for which a person is held in police detention, which ensures an appropriate level of independence in the supervision.

Article 5(3) ECHR requires that where an individual has been detained on suspicion of having committed an offence, the initial exercise of judicial supervision should be “prompt”. The European Court has observed that the degree of flexibility attached to the notion of ‘promptness’ is limited, and whether a period of pre-trial detention is reasonable is judged by the complexity of the proceedings and the degree of activity in preparing the case. Prolonged inactivity will inevitably lead to a finding of a violation, so it will be important that jurisdictional determinations are conducted with due diligence.

Deprivation of liberty prior to judicial authorisation for its continuance must not last longer than is genuinely required for the purposes of processing a suspect to be ECHR compatible. The European Court has determined that the sense of immediacy recognised as critical would be lost in most cases if the delay in producing someone before a court exceeded 48 hours by more than a few hours. PPACE CoP 2004 provides that police detention may be extended at varying intervals subject to authorisation from an officer of appropriate seniority, but that as soon as a custody officer becomes aware that the grounds for detention no longer apply they are to arrange the person’s immediate release. Only where the case being investigated is a serious offence and the officer believes further detention is needed to preserve or secure evidence or obtain evidence by questioning, and the investigation is being conducted “diligently and expeditiously”, may detention for a longer period be authorised. Article 6 of the draft Law meets this requirement by requiring expressly that “reasonable grounds for believing that enquiries are being conducted diligently and expeditiously” are present in relation to determining whether a concurrent forces jurisdiction exists.

Article 9 of the draft Law provides for the arrest of deserters and absentees without leave, both by police without a warrant on reasonable suspicion, and on a warrant issued by a Magistrate. If a person subject to forces law is intentionally or negligently absent without leave, they commit an offence under s.9 AFA 2006. The AFA 2006 provides a system of home forces discipline and justice that applies, as a matter of United Kingdom law, to the British armed forces wherever they are in the world; however, the AFA 2006 does not extend automatically to Jersey. The purpose of Article 9 of the draft Law is to make provision in Jersey law to ensure that service persons who go absent without leave in Jersey may be apprehended.

For the Article 5(1)(c) ECHR exception to cover arrest under Article 9, there must exist in Jersey an offence of being an unlawful absentee. As there is no offence of unlawful absenteeism in Jersey – and no desire to extend the offence under AFA 2006 to Jersey – deprivation of liberty in Article 9 circumstances must be justified under one of the other Article 5(1) exceptions. Article 5(1)(b) ECHR permits arrest or detention of a person “for non-compliance with the lawful order of a court or in order

to secure the fulfilment of any obligation prescribed by law” (our emphasis). The categories of situation covered by this provision are not entirely clear. However, the European Court has held that the obligation prescribed by law must be a specific or concrete obligation. The European Court has held that an obligation to do military service is sufficiently specific.

Under Article 9, police officers may only arrest suspected unlawful absentees where there has been a “request (whether specific or general) of a service authority to do so”. By virtue of Article 2(1) of the draft Law, home forces authorities and courts may, within Jersey, exercise all the powers they have under UK forces law over service persons, including the power to arrest service persons who are unlawfully absent. The existence of such a request from a service authority or court can thus be seen to import a specific and concrete obligation in that particular case, the enforcement of which justifies detention under the Article 5(1)(b) ECHR exception.

Detention may be justified under the second limb of Article 5(1)(b), only when its purpose is to secure fulfilment of the relevant obligation rather than to punish the person concerned breaching it. Article 9(3) prescribes a transfer to service custody “as soon as practicable” following arrest, and as such can be seen to satisfy this Article 5(1)(b) requirement by securing the return of the suspect to the custody of the authority to whom the duty is owed.

Article 10 of the draft Law engages Article 5(1) ECHR by prescribing detention of a person by a police officer following that person’s surrender as an unlawful absentee while the case is considered. For Article 10 purposes, an individual in transit is deemed to be in lawful custody. As with Article 9, detention under Article 10 can be justified under the Article 5(1)(b) ECHR exception – detention to secure fulfilment of an obligation prescribed by law.

Article 10(8) provides that a police officer or custody officer detaining a person must ensure that “prompt and reasonable efforts are made to seek evidence from a service authority as to whether the person is an unlawful absentee”. This requirement ensures that a person is only detained whilst the existence of a ‘specific and concrete’ legal obligation under UK forces law that applies to them is confirmed. The very fact of a person having surrendered may be taken to offer some assurance about the existence of such an obligation. This obligation under forces law is enforceable in Jersey by virtue of Article 2(1) of the draft Law. Article 2(1) has imported into Jersey law the powers of forces authorities to enforce obligations owed by service persons, and the power to detain in Article 10 grants civilian police the power to provide assistance to forces authorities seeking to exercise their powers. The maximum period of detention in police custody whilst the verification and, if necessary, transfer to service custody are made, will be subject to the same considerations as discussed above in relation to police detentions under Article 6.

After consideration of the case, where it appears that the surrendering person is an unlawful absentee, that person will only continue to be detained where necessary pending transfer to service custody (Article 10(5)(b)).

Article 10(5)(b)(iii) provides for release pending transfer to service custody, subject to reporting conditions. Reporting conditions – specifying a time, place and person to whom the relevant individual must report – are unlikely to amount to deprivation of liberty under Article 5 ECHR, as military curfews and orders preventing a person from leaving a particular area were not considered to constitute deprivations of liberty by the European Court. Where a person fails to comply with the reporting conditions specified the Magistrate may issue a warrant for their arrest. Such an arrest will be ECHR-compliant, as the determination has already been made that there exists a

specific legal obligation which they have failed to fulfil. Arrest with a transfer to service custody as soon as practicable secures its fulfilment and so complies with Article 5(1)(b) ECHR.

Article 11 of the draft Law provides that the Magistrate may issue a warrant for the Jersey police to arrest a person for whom a judge advocate has issued an arrest warrant to civilian police in the UK or a British Overseas Territory under section 313 AFA 2006 on suspicion of having committed a service offence. As with Articles 9 and 10, the arrest by Jersey police officers of a person specified in a warrant complies with the ECHR under the Article 5(1)(b) ECHR exception. By virtue of Article 2(1) of the draft Law, forces authorities in Jersey have the power to deal with forces offences in Jersey directly. As such, the obligations owed by service persons – pursuant to which powers were granted to UK forces authorities to enforce – may also be viewed as existent in Jersey, particularly where there has been a direct request for assistance from a service authority or court to the Jersey police. The existence of a judge advocate warrant for a service person’s arrest ensures that there is a ‘specific and concrete’ obligation in Jersey the enforcement of which justifies the arrest by civilian police. As in Articles 9 and 10, a person arrested pursuant to an Article 11 warrant must be transferred as soon as practicable to service custody or the custody of the relevant overseas officer (to whom the judge advocate warrant is addressed).

Article 12 of the draft Law achieves ECHR compatibility under the Article 5(1)(a) ECHR exception: the detention of a person after conviction by a competent court. Article 2(6) of the draft Law provides that sentences passed by a service court are deemed to be within the jurisdiction of that court and in accordance with forces law and the court is deemed to have been properly constituted. Article 12(1) provides that a person sentenced to service detention who is unlawfully at large may be arrested and detained. The European Court has confirmed that a conviction justifying detention under Article 5(1)(a) ECHR may be for a disciplinary offence as well as a criminal offence, and that the conviction may be that of a foreign court, unless the conviction resulted from a flagrant denial of justice. Therefore arrest and detention pursuant to Article 12(1) is compatible with the ECHR.

Article 15 provides for detention in prison in Jersey of a person in service custody pending that person’s removal from Jersey for the purposes of the investigation of or proceedings in respect of a suspected forces offence. The detention takes place following a request from a service authority who has the relevant individual in their custody, and consent to such a request being given by the governor of the prison. As with Articles 9, 10 and 11 of the draft Law, detention may be justified under the Article 5(1)(b) ECHR exception as integral to providing for the operation of forces justice within Jersey pursuant to Article 2(1) of the draft Law. The legal obligation is rendered sufficiently ‘specific and concrete’ in Jersey law by virtue of the fact that the service authority must have requested use of the prison for the purposes of carrying out their lawful detention of the suspect.

### **Article 6: Right to Fair Trial**

Article 6 ECHR provides for the right to a fair trial. Elements of this right are potentially engaged by Articles 5, 16 and 17 of the draft Law.

Article 5 of the draft Law concerns the determination of whether a person subject to forces powers should be dealt with for the civilian offence or the forces offence where the person is suspected of an act that constitutes both. It gives the Attorney General a power to issue a certificate preventing service courts and authorities from performing acts that might impact on any future prosecution of the civilian offence. Article 5 of

the draft Law also sets out factors the Attorney General must have regard to in determining the appropriate jurisdiction. These include whether a service authority has indicated that it considers it to be important that the person be dealt with for the forces offence first (Article 5(7)(e)(i)). These factors are drawn from equivalent provisions in the status of forces agreements (“SOFAs”) of NATO and the EU. In such agreements, the sending or visiting state has the primary right to exercise jurisdiction over a member of the force, or civilian component in relation to: (1) inter se offences – i.e. offences solely against the person or property of another member of the force, civilian component or dependent, or solely against the property or security of the sending state; and (2) offences arising out of any act or omission done in the performance of an official duty. The host state has the primary right to exercise jurisdiction in all other cases. Each state must give ‘sympathetic consideration’ to a request for a waiver of jurisdiction over a case considered by the requesting state to be of particular importance.

Article 6(1) ECHR requires that those who face a determination of their ‘civil rights and obligations’ must be entitled to a ‘fair and public hearing ... by an independent and impartial tribunal’. The guarantees afforded by Article 6 ECHR will only be relevant to the extent that an act or a decision is determinative of a ‘civil right’ or ‘obligation’. The term ‘civil rights’ has the autonomous meaning given to it by the European Court: it must be determined by reference to the substantive content and effects of the right. Historically, civil rights have been associated with private law rights found in civil law systems. The European Court has long accepted that some administrative decisions can also be embraced by the Article’s procedural guarantees – for example, monetary claims against public authorities and disciplinary proceedings – however, there are categories of decisions that remain outside the scope of Article 6 ECHR, including those relating to immigration and asylum and certain employment rights of public servants.

The “determination” in Article 5 of the draft Law is the Attorney General’s decision as to which authority – forces or civilian – has jurisdiction over a person subject to forces law who is suspected of an act constituting both a forces offence and a civilian offence.

The case law most relevant to the circumstances in Article 5 relates to immigration decisions, because these involve determinations that may result in transferring a person to a different jurisdiction. In several cases, the European Court has ruled that this area of law does not engage Article 6(1) ECHR. It is a reasonable assumption that the European Court would apply similar reasoning to cases in which the Attorney General decides to convey a suspect into forces authority jurisdiction for the purpose of that person being dealt with for a forces offence.

Article 16 provides that records or certificates from service authorities can be admitted as evidence if these would be admissible in the equivalent civilian proceedings in the UK. Article 6(1) ECHR requires that in the determination of any criminal charge the relevant individual “is entitled to a fair and public hearing”. In general, the assessment of evidence is a matter for domestic courts, and the European Court will not substitute its own view of the facts for an assessment which has been fairly reached by an independent and impartial tribunal. The ECHR does not lay down a comprehensive set of rules for the admissibility of evidence; this is primarily a matter for regulation through national law. The European Court regards its function as to determine whether proceedings taken as a whole are fair, and whether the parties’ rights were adequately respected. As such, Article 16 of the draft Law will comply with the Article 6 ECHR fairness requirements.

Article 17 prevents a civilian court in Jersey from entertaining proceedings about service pay or pensions, terms of service or discharge from service. It also prohibits a civilian court order preventing or redirecting payment of service pay or pension, except for arrest of wages or in bankruptcy. This aligns with the European Court's judgment that where national law expressly excludes access to a court for staff exercising public law powers and duties designed to safeguard State interests, and the exclusion is justified on objective grounds in the State's interest, employment disputes concerning such public officials remain outside the scope of Article 6 ECHR. The Court has stated that this is intended to include the armed forces and the police.

Members of the UK armed forces have no contract of employment and no system of collective bargaining. Pay, allowances and other benefits are determined and altered unilaterally. The UK armed forces do not have access to employment tribunals except with respect to equal pay and discrimination. It has therefore long been recognised that members of the armed forces should have some other effective way of obtaining redress of grievances. This is provided for in Part 14 AFA 2006 as amended by the Armed Forces Act 2011. The process under the 2006 Act is essentially internal to the armed forces, subject to judicial review.

Under UK forces law, proceedings in relation to pay, the terms of a person's service in Her Majesty's forces, a person's discharge from such service, and disputes in relation to pensions, are excluded from access to a civilian court; however, the European Court has held that such proceedings are exempt from the guarantees of Article 6 ECHR, under the principle of subsidiarity. Consequently, applying such exclusions in Jersey with respect to service persons does not raise any Article 6 ECHR compatibility issues.

## Explanatory Note

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This Law makes provision for the treatment under Jersey law of the armed forces when they are in Jersey. In particular it provides for the operation in Jersey of the system of discipline and justice under the Armed Forces Act 2006 of the United Kingdom (as subsequently renewed and amended). It also provides for the operation in Jersey of equivalent systems of discipline and justice of the armed forces of other countries, based on the provision made for those forces when visiting the United Kingdom by the Visiting Forces Act 1952 of the United Kingdom. In addition it gives powers to civilian police and courts in relation to deserters and others, creates offences by civilians in relation to the armed forces (such as assisting desertion), protects the pay and equipment of the armed forces from action in civilian courts, and enables the States by Regulations to amend legislation to provide for the use of vehicles and roads by the armed forces.

The Armed Forces Act 2006 (and related legislation such as the Reserve Forces Act 1996) provides for a system of discipline and justice that applies, as a matter of United Kingdom law, to the British armed forces wherever they are in the world. Previously an equivalent system was created by separate Acts for each of the forces, and each Act was extended directly to Jersey (modified by Orders in Council) to form part of Jersey law. The Armed Forces Act 2006 does not extend automatically to Jersey. Instead this Law makes provision to ensure that, as a matter of Jersey law, that system of discipline and justice can operate in Jersey (without needing to be supplemented by an Order in Council extending any modified provisions of the Armed Forces Act 2006 to Jersey).

*Part 1* sets out how the Law is to be interpreted (*Article 1*). It refers to the law of the United Kingdom as it stands from time to time, rather than specifying provisions of the current legislation.

It defines 3 categories of persons to whom the Law applies, each category building on the last as follows.

The narrowest category is a person “subject to service law”. That is defined by the Armed Forces Act 2006 to mean members of the regular forces at all times (excluding officers who are not on the active list, but including those who are recalled to service, from their acceptance into service until their release or discharge), members of the reserve forces while in certain types of service or undertaking any training or duty, members of British overseas territory forces undertaking any training or duty with a regular or reserve force, and members of certain Commonwealth forces while attached temporarily to such a force.

The intermediate category is “service person”. That is defined by this Article to include all those listed above as subject to service law, plus all other members of a reserve force and anyone else who is liable to recall.

The broadest category is a person “subject to forces powers”. That is defined, via *Article 2(2)*, to include all those listed above as service persons, plus anyone who was previously a service person and remains liable to prosecution for a forces offence committed at that time. The definition does not include a person who is reasonably believed to be, but in fact is not, a service person (even when a power is exercisable over that person by virtue of *Article 2(3)* – see note below).

The Law does not make any provision for the category of “civilians subject to service discipline”, as defined in Schedule 15 to the Armed Forces Act 2006. Those civilians

are subject to some powers of service authorities and courts in some cases under that Act. But a person cannot be treated as a “civilian subject to service discipline” while in Jersey, because that Schedule excludes from that definition anyone who is present in any of the British Islands (with very limited exceptions for civilians on forces aircraft in flight or on forces ships afloat, and civilians in lawful service custody or who are being arrested under a service law duty).

*Part 2* provides for the authorities and courts of the armed forces to exercise in Jersey their jurisdiction over their members under the Armed Forces Act 2006, and relates that to the jurisdiction of Jersey’s civilian authorities and courts. It also similarly provides for the exercise of jurisdiction by the authorities and courts of forces of other countries when visiting Jersey in certain circumstances.

*Article 2* allows service courts, service police forces and other service authorities to exercise in Jersey the powers that they have for the time being under United Kingdom forces law over people who are or have been service persons. Certain powers under forces law are also exercisable in the United Kingdom over persons reasonably believed to be service persons (even if they are not in fact service persons). Paragraph (3) enables those powers, but not others, to be exercised in Jersey on the basis of that reasonable belief. Paragraph (4) allows a service authority to issue a certificate to state that a person is or has been a service person, and requires a civilian court to treat that as sufficient evidence unless it is disproved. Paragraph (5)(a) makes express provision for the service authorities to exercise powers to detain current and former service persons (including removing them from Jersey). Paragraphs (5)(b) and (6) provide for the effect in Jersey law of detention and sentencing under forces law.

Paragraphs (7) to (9) clarify that the powers can only be exercised over persons subject to forces powers and not over civilians, and that the rights of civilians are not affected. So for example forces powers, particularly under Part 3 of the Armed Forces Act 2006 to stop and search vehicles or enter and search premises and seize items, will not therefore be exercisable over vehicles, premises and items owned or rented by civilians (without the consent of the civilian). Equally where premises (or other property) are jointly owned between a person subject to forces powers and a civilian, the civilian’s rights are not limited by the exercise of the forces powers. However, Parts 3 and 4 of this Law (see notes below) create offences that do apply to civilians, but which are enforced by the civilian police and courts rather than the forces police. Those civilian offences include offences of aiding desertion (or aiding acts of malingering and absence without leave), and of intentionally obstructing a person subject to service law in the course of their duty.

*Article 3* makes similar provision to *Article 2*, but in relation to the courts, police forces and other authorities of visiting forces of other countries that are for the time being covered by equivalent provisions in the Visiting Forces Act 1952 of the United Kingdom. This provision does not prevent a force from visiting Jersey if it does not wish to be able to exercise its powers over its members during the visit. But if it is to exercise those powers under this Law, then it must have been invited by one of the British armed forces (regular or reserve) and the visit must be covered by an authorization from the Minister. That authorization can be given generally or for a particular visit. It can only be given if the Minister has considered any relevant international agreement about visiting forces (such as the “status of forces agreements” of NATO and the EU), and is satisfied that it is likely that the visiting force will not act incompatibly with any human rights (the Minister can attach a condition for that purpose). Parts 3 and 4 of this Law do not apply in respect of

visiting forces, but visiting forces are covered by the provisions in *Article 2(7) to (9)* on rights of civilians, and by those in *Articles 4 to 6* on double jeopardy and overlapping jurisdiction.

*Article 4* gives protection against double jeopardy by preventing a person being tried for an offence by a Jersey court if the person has already been convicted or acquitted of an equivalent forces offence (or had the offence taken into consideration for sentencing for another forces offence).

*Article 5* provides for the Attorney General to decide on the appropriate approach to cases in which both the forces and civilian authorities would otherwise have jurisdiction because the act or omission concerned constitutes both a forces offence and a civilian offence. The Attorney General may issue a certificate that, for a specified period (at the longest until a civilian prosecution is concluded), prevents the forces authorities from obstructing the investigation or prosecution of the civilian offence (by preventing access to the person, removing the person from Jersey, convicting or acquitting the person, or in any other way). In deciding whether to use that power the Attorney General must have particular regard to a list of factors drawn from the equivalent provisions in the “status of forces agreements” of NATO and the EU.

*Article 6* gives the civilian police express grounds to detain a person, when the person is suspected of a civilian offence but not yet charged. The grounds apply where there is a reasonable belief that the person may be subject to forces powers, and that the detention is necessary to enable enquiries to be made as to whether the person should be prosecuted by the service authorities. These grounds are in addition to any other grounds for detention that may apply to the person under the Police Procedures and Criminal Evidence (Jersey) Law 2003 or otherwise.

*Part 3* creates civilian offences connected with assisting desertion and related absences, and gives civilian police powers in relation to deserters and others (but not in relation to visiting forces).

*Article 7* provides for the interpretation of Part 3. It defines an “unlawful absentee” as a person who has deserted or is absent without leave, as those terms are in turn defined in forces law.

*Article 8* creates civilian offences carrying imprisonment for up to 2 years, a fine (with no limit on the amount), or both. A civilian in Jersey (or outside Jersey, but resident here) must not knowingly help someone to desert, go absent without leave or malingering, and must not knowingly impede the apprehension or prosecution of someone who is deserting or absent without leave.

*Article 9* provides for the arrest by civilian police of deserters and absentees without leave. A police officer can arrest the person without a warrant on reasonable suspicion (at the request of a service authority), or on a warrant issued by the Magistrate. The arrested person must be transferred to service custody.

*Article 10* provides for a person surrendering to civilian police as a deserter or absentee without leave, while enquiries are made with a service authority as to the person’s status. The person must be taken to a police station (if not surrendering at one), where the custody officer must detain the person while looking into whether the person is an unlawful absentee, and deciding on the course of action (or arranging for the Magistrate to decide). If the person appears not to be an unlawful absentee, he or she must be released unless there are other grounds for detention. If the person appears to be an unlawful absentee, the custody officer (or the Magistrate, if the custody officer has passed the case on) must decide whether the person can be transferred to service custody, or be released on condition of reporting later to go into service

custody, or whether there are other grounds for detention. If there are other grounds, the service authorities must be notified (and the Attorney General decides whether the person should nevertheless be transferred to service custody).

*Part 4* creates other civilian offences and makes other provision in relation to civilian police, courts and prison (but not in relation to visiting forces).

*Article 11* allows the Magistrate to issue a warrant for the civilian police to arrest a person for whom a judge advocate has issued an arrest warrant to civilian police in the UK or a British Overseas Territory under section 313 of the Armed Forces Act 2006 (on suspicion of having committed a service offence). A person arrested must be transferred to the custody of the police to whom the judge advocate issued the original warrant, or to service custody (if available).

*Article 12* allows civilian police to arrest and return a person who has been sentenced to service detention but is unlawfully at large.

*Article 13* creates a civilian offence of intentionally obstructing a person subject to service law in course of that person's duty. The offence carries imprisonment for up to 1 year, a fine of up to level 3 on the standard scale (currently £10,000), or both.

*Article 14* creates a civilian offence of knowingly giving false or misleading information in an enlistment procedure, in a claim for exemption from service as a reservist, or in an application for payment in relation to service as a reservist (including claims and applications by employers). The offence carries imprisonment for up to 1 year, a fine of up to level 3 on the standard scale (currently £10,000), or both.

*Article 15* allows the civilian prison to be used, at the governor's discretion, for the detention, pending removal from Jersey, of a person held in service custody for a forces offence.

*Article 16* provides that, in a trial for the civilian offences in *Articles 8, 13 or 14* (aiding unlawful absence, obstruction, and false information – see notes above), a record or certificate from a service authority can be admitted in evidence if it would be admissible in proceedings for the equivalent civilian offence in England.

*Article 17* prevents a civilian court in Jersey from entertaining proceedings about service pay or pensions, terms of service or discharge from service. It prevents assignment or charge of service pay or pension, and prohibits a civilian court order preventing or redirecting payment of service pay or pension, except for arrest of wages or in bankruptcy. It also protects, from arrest or distraint by a civilian court, weapons and equipment used for service in the armed forces.

*Part 5* contains miscellaneous and closing provisions.

*Article 18* provides for the States, by Regulations, to make amendments to this Law and other enactments. The power is exercisable to make amendments in consequence of any amendments made to the relevant UK legislation, to amend this Law and others in relation to detention (and arrest, release and transfer to service custody) of members of the armed forces and others, to amend Laws relating to armed forces' use of motor vehicles, and to make general consequential provision for the coming into force of this Law.

*Article 19* names the Law and provides for it to be brought into force by one or more Appointed Day Acts.





Jersey

## **DRAFT ARMED FORCES (OFFENCES AND JURISDICTION) (JERSEY) LAW 201-**

### **Arrangement**

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Jersey

## **DRAFT ARMED FORCES (OFFENCES AND JURISDICTION) (JERSEY) LAW 201-**

**A LAW** to provide for the jurisdiction of the police, courts and other authorities of British and other armed forces over members of those forces in Jersey, to empower civilian police to arrest and detain members of the British armed forces in connection with that jurisdiction, to create offences relating to those forces, to make provision for members of those forces in relation to civilian police and courts, and for connected purposes

*Adopted by the States* [date to be inserted]

*Sanctioned by Order of Her Majesty in Council* [date to be inserted]

*Registered by the Royal Court* [date to be inserted]

**THE STATES**, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law –

### **PART 1**

#### **INTERPRETATION**

##### **1 Interpretation**

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

“Armed Forces Act” means the Armed Forces Act 2006 of the United Kingdom;

“civilian court” means any court or tribunal exercising a criminal or civil jurisdiction under the law of Jersey, and, despite Articles 2 and 3, does not include –

(a) a service court; or

(b) a court that is a relevant authority under the relevant law of a listed country, within the meaning of Article 3;

“civilian offence” means an offence under the law of Jersey, and, despite Articles 2 and 3, does not include –

(a) a forces offence; or

- (b) an offence under the relevant law of a listed country, within the meaning of Article 3;

“force”, other than in the expression “police force”, means a naval, military or air force;

“forces law” means –

- (a) the Armed Forces Act;
- (b) the Reserve Forces Act 1980 and the Reserve Forces Act 1996 of the United Kingdom;
- (c) section 113 of the Police and Criminal Evidence Act 1984 of the United Kingdom; and
- (d) any enactment of the United Kingdom made under any of those Acts or that section;

“forces offence” means an offence in respect of which a service authority or service court has jurisdiction under forces law;

“forces powers” is to be construed in accordance with paragraph (2)(c);

“Minister” means the Minister for Home Affairs;

“Police Procedures Law” means the Police Procedures and Criminal Evidence (Jersey) Law 2003<sup>1</sup>;

“service authority” means a service police force, within the meaning of the Armed Forces Act, or any other authority of a force whose members are subject to service law;

“service court” means a court established under forces law, or any other court to which an appeal is taken from such a court;

“service custody” means the custody, under forces law, of a service authority or service court;

“service law” is to be construed in accordance with paragraph (2)(a);

“service person” has the meaning given by paragraph (2)(b).

- (2) For the purposes of this Law –
- (a) a person is “subject to service law” if that person is so subject under the definition of that expression in section 374 of the Armed Forces Act;
- (b) a person is a “service person” if that person is –
- (i) a person who is subject to service law,
- (ii) a member of a reserve force, within the meaning of the Armed Forces Act, who is not subject to service law, or
- (iii) any other person who is liable to recall for the purpose of the Reserve Forces Act 1980 or the Reserve Forces Act 1996 of the United Kingdom; and
- (c) a person is “subject to forces powers” if that person falls within Article 2(2), other than by virtue of Article 2(3).
- (3) For the purposes of this Law –

- 
- (a) a reference to an enactment of the United Kingdom is a reference to that enactment as from time to time amended, excluding any provision that is extended (with or without modification) to Jersey;
  - (b) “amend”, in relation to such an enactment, includes repeal; and
  - (c) if a provision of such an enactment is repealed or expires, and is re-enacted (with or without modification), a reference in this Law to the repealed or expired provision is to be construed as a reference to the provision so re-enacted.
- (4) The Minister may, without prejudice to the generality of Article 18, by Order amend paragraph (1) or (2) to the extent that it appears to the Minister to be necessary or expedient to amend a definition in that paragraph in consequence of any amendment, made after the coming into force of this Law, to an enactment of the United Kingdom forming part of forces law.
  - (5) An Order under paragraph (4) may contain such transitional, consequential, incidental or supplementary provision as appears to the Minister to be necessary or expedient for the purposes of the Order, including provision by way of amendment of any provision of this Law.

## **PART 2**

### **JURISDICTION OF COURTS AND AUTHORITIES OF ARMED FORCES**

#### **2 Exercise of powers under forces law**

- (1) The service courts and service authorities may within Jersey exercise, over persons falling within paragraph (2), all the powers that are exercisable in the United Kingdom under forces law by those courts and authorities over those persons.
- (2) A person falls within this paragraph if he or she –
  - (a) is a service person; or
  - (b) has ceased to be a service person, but is liable under forces law to prosecution for an alleged forces offence committed while he or she was a service person.
- (3) For the purpose of paragraph (1), a person who is not a service person, but whom a service authority reasonably believes to be a service person, is to be treated as a person falling within paragraph (2) in relation to the exercise in Jersey by that service authority of a power that is exercisable by a service authority in the United Kingdom under forces law in relation to a person who is reasonably believed to be a service person.
- (4) A certificate issued by a service authority, stating that a person is a service person, or was a service person at a time specified in the certificate, is to be taken as sufficient evidence of the fact so stated for the purpose of proceedings in a civilian court, unless the contrary is proved.
- (5) Without prejudice to the generality of paragraph (1) –

- 
- (a) the powers that may be exercised under that paragraph include any power exercisable by a service court or service authority under forces law –
- (i) to detain a person, in service custody or otherwise, or
  - (ii) to remove a person from Jersey; and
- (b) any place where a person is lawfully held in service custody, or is otherwise lawfully detained in exercise of a power under paragraph (1), is to be taken to be a legal place of detention for the purposes of the Inquests and Post-Mortem Examinations (Jersey) Law 1995<sup>2</sup>.
- (6) Without prejudice to the generality of paragraph (1), if a sentence has been passed (whether in or outside Jersey) by a service court on a person who, when that sentence was passed, was subject to forces powers, then for the purpose of any proceedings in a civilian court –
- (a) that service court is deemed to have been properly constituted;
  - (b) the sentence is deemed to be within the jurisdiction of that court and in accordance with forces law; and
  - (c) the sentence is deemed to have been lawfully executed if it is executed according to its tenor.
- (7) Subject to paragraph (3), nothing in paragraph (1) is to be construed as permitting the exercise of a power over a person who is not subject to forces powers (a “civilian”).
- (8) Accordingly, and without prejudice to the generality of paragraph (7), the exercise of a power under paragraph (1) does not limit any right of a civilian in relation to any property.
- (9) For the purpose of paragraph (8) –
- (a) the reference to a right in relation to property includes a right of an owner or tenant of premises that are entered or searched, a right of an owner or hirer of a vehicle that is stopped or searched, a right of an owner of an item or document that is found or seized in a search, and any other right in relation to any other property; and
  - (b) it is irrelevant whether a person who is subject to forces powers shares the right mentioned in that paragraph as a joint owner or in any manner, or has any other right in relation to the property mentioned in that paragraph.

### **3 Exercise of powers under laws of visiting forces**

- (1) In this Article –
- “home force” means any of the regular forces or the reserve forces, within the meaning of those terms in the Armed Forces Act;
- “listed country” means a country that –
- (a) is specified in section 1(1)(a) of the Visiting Forces Act 1952 of the United Kingdom; or

- (b) is designated by an enactment of the United Kingdom under section 1(2) of that Act as a country to which section 2 of that Act applies;

“relevant authority”, in relation to a listed country, means a court, police force or other authority of that country, that has jurisdiction over members of the forces of that country under the relevant law of that country;

“relevant law”, in relation to a listed country, means the law governing all or any of the forces of that country.

- (2) The relevant authorities of a listed country may within Jersey exercise, over persons falling within paragraph (3), all the powers that are exercisable by them, over those persons, according to the relevant law of that listed country.
- (3) A person, other than a person subject to forces powers, falls within this paragraph in relation to a listed country if he or she is –
- (a) a member of a visiting force of that listed country;
- (b) a relevant civilian accompanying a visiting force of that listed country; or
- (c) a member of a force of that listed country who is a visiting member of a headquarters.
- (4) For the purpose of paragraph (3) –
- (a) a body, contingent or detachment of a force is a visiting force if –
- (i) it is visiting Jersey at the invitation of any of the home forces, and
- (ii) a jurisdiction authorization, being an authorization issued by the Minister under paragraph (5), is in effect for the time being for that visit;
- (b) a relevant civilian is a person who –
- (i) is subject to the relevant law of the listed country, otherwise than as a member of that country’s forces, and
- (ii) is neither a British citizen nor ordinarily resident in Jersey or the United Kingdom;
- (c) a person is a visiting member of a headquarters if the person –
- (i) is for the time being appointed to serve in the United Kingdom under the orders of a headquarters, within the meaning of the International Headquarters and Defence Organisations Act 1964 of the United Kingdom, and
- (ii) is visiting Jersey in connection with that service, on a visit for which a jurisdiction authorization is in effect for the time being under paragraph (5);
- (d) a person is not to be treated as a member of a force if that person became, or last became, a member of that force at a time when he or she –
- (i) was in Jersey or in the United Kingdom, and
- (ii) did not consent to becoming such a member; and

- 
- (e) if a force is in the nature of a reserve or auxiliary force (by whatever name called), a person is a member of that force so long as, but only so long as, the person is called into actual service (by whatever expression described) or is called out for training.
- (5) The Minister –
- (a) may issue a jurisdiction authorization for –
- (i) a particular visit,
  - (ii) all visits within a particular period by a particular force or by a particular listed country's forces,
  - (iii) any other description of visits, whether by reference to periods, forces, listed countries or otherwise, or
  - (iv) all visits by all forces of all countries that are listed countries at the time the authorization is issued;
- (b) must, before deciding whether to issue a jurisdiction authorization in relation to any listed country –
- (i) have particular regard to any agreement, as to visits by forces, to which the United Kingdom and that listed country are parties (including an agreement that does not apply in respect of Jersey), and
  - (ii) be satisfied that in all the circumstances it appears likely that the relevant authorities of that listed country will not, in the exercise of their powers under paragraph (2), act in a way which is incompatible with a Convention right, as defined by Article 1(1) of the Human Rights (Jersey) Law 2000<sup>3</sup>;
- (c) may attach to a jurisdiction authorization any condition appearing necessary or expedient to the Minister in relation to the matters mentioned in sub-paragraph (b), including a condition that imposes a limit on the powers that may be exercised under paragraph (2);
- (d) must give one or more of the home forces written notice of an issued jurisdiction authorization; and
- (e) may revoke a jurisdiction authorization at any time, by giving written notice to –
- (i) the home force or forces to which notice was given under sub-paragraph (d), and
  - (ii) if a member of a force of a listed country is present in Jersey on a visit for which the jurisdiction authorization was issued, to a person appearing to be a relevant authority of that listed country.
- (6) Without prejudice to the generality of paragraph (2) or to any limit imposed under paragraph (5)(c) –
- (a) the powers that may be exercised under paragraph (2) include any power exercisable by a relevant authority under the relevant law of the listed country –
- (i) to detain a person, in custody or otherwise, or
  - (ii) to remove a person from Jersey; and

- 
- (b) any place where a person is lawfully held in custody by a relevant authority, or is otherwise lawfully detained in exercise of a power under paragraph (2), is to be taken to be a legal place of detention for the purposes of the Inquests and Post-Mortem Examinations (Jersey) Law 1995.
  - (7) Without prejudice to the generality of paragraph (2) or to any limit imposed under paragraph (5)(c), if a sentence has been passed (whether in or outside Jersey) by a court that is a relevant authority of a listed country (the “relevant court”) on a person who, when that sentence was passed, fell within paragraph (3) in relation to that listed country, then for the purpose of any proceedings in a civilian court –
    - (a) that relevant court is deemed to have been properly constituted;
    - (b) the sentence is deemed to be within the jurisdiction of that relevant court and in accordance with the relevant law of that listed country; and
    - (c) the sentence is deemed to have been lawfully executed if it is executed according to its tenor.
  - (8) Articles 2(7) to (9), 4, 5 and 6 apply in respect of the powers of a relevant authority of a listed country under this Article over a person falling within paragraph (3), as they apply in respect of the powers of a service court or service authority under Article 2 over a person subject to forces powers.

#### **4 Service proceedings barring subsequent civilian proceedings**

- (1) This Article applies to a person who –
  - (a) has been convicted or acquitted of a forces offence; or
  - (b) has had such an offence taken into consideration when being sentenced under forces law.
- (2) A civilian court may not try that person for any civilian offence for which, under the law of Jersey, it would be debarred from trying the person if he or she had been convicted, or (as the case may be) acquitted, of the corresponding offence by a civilian court.
- (3) For the purpose of paragraph (2) the “corresponding offence” is the civilian offence, if any, that is constituted by the act, or alleged act, that constitutes the forces offence mentioned in paragraph (1).
- (4) In paragraph (1) the references to a person being convicted, acquitted or sentenced are to be read in accordance with the forces law applicable to the forces offence.

#### **5 Decision of Attorney General on overlapping jurisdiction**

- (1) This Article applies to a person subject to forces powers who –
  - (a) is suspected of an act that constitutes both a forces offence and a civilian offence; and

- (b) is not protected by Article 4 from prosecution for that civilian offence.
- (2) The Attorney General may issue a certificate that states that he or she –
  - (a) is considering whether it is more appropriate for the person to be dealt with for the civilian offence; or
  - (b) has decided that it is more appropriate for the person to be dealt with for the civilian offence.
- (3) The certificate is valid during a period starting with the issue of the certificate and ending (without prejudice to the power to issue a further certificate) on a date specified in the certificate.
- (4) The Attorney General –
  - (a) may withdraw a certificate at any time; and
  - (b) must withdraw a certificate –
    - (i) on deciding that it is not more appropriate for the person to be dealt with for the civilian offence,
    - (ii) on deciding not to commence any proceedings for that offence, or
    - (iii) on the conclusion of the proceedings for that offence.
- (5) During the period of validity of a certificate a service court or service authority may not take any step that would prejudice or obstruct the investigation and prosecution of the civilian offence.
- (6) Without prejudice to the generality of paragraph (5), 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 the police;
  - (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 Jersey; or
  - (d) dealing with the forces offence in such a way that the person becomes protected by Article 4 from prosecution for the civilian offence.
- (7) The Attorney General must, in considering under paragraph (2) whether to issue a certificate and whether it is more appropriate for a person to be dealt with for a civilian offence, have particular regard to –
  - (a) whether the offence was solely against the property of the Crown or against national security;
  - (b) whether the offence was solely against the person or property of a person who was subject to service law at the time of the offence;
  - (c) whether the offence arose out of an act in the performance of official duty;
  - (d) if the person suspected of the offence is not subject to service law, whether that person is ordinarily resident in the United Kingdom; and

- 
- (e) whether a service authority has indicated that it considers it to be of particular importance that, before the person is dealt with for the civilian offence, the person should –
    - (i) be dealt with for the forces offence, or
    - (ii) take part in active service, within the meaning of section 8 of the Armed Forces Act.
  - (8) A written statement by a service authority, stating that an act was in the performance of official duty, is to be taken as sufficient evidence of the fact so stated for the purpose of paragraph (7)(c), unless the Attorney General is satisfied to the contrary.
  - (9) For the purpose of paragraph (1)(a), the person remains suspected of the act after being charged for the civilian or forces offence constituted by the act, and accordingly nothing in paragraph (1)(a) prevents the Attorney General from issuing a certificate after such a charge but before the conclusion of any proceedings on such a charge.

## **6 Detention pending decision on overlapping jurisdiction**

- (1) In this Article “relevant suspect” means a person –
  - (a) who is in police detention within the meaning of Article 2 of the Police Procedures Law;
  - (b) who is suspected of a civilian offence, but who has not yet been charged with that offence; and
  - (c) in respect of whom there are reasonable grounds for believing that he or she may be a person subject to forces powers.
- (2) To the extent that grounds are required under the Police Procedures Law for police detention before charge, there are to be taken to be such grounds in relation to a relevant suspect at any time when the conditions in both of paragraphs (4) and (5) are met.
- (3) The grounds provided by paragraph (2) are in addition to any other grounds for police detention that may apply in respect of a relevant suspect.
- (4) The first condition is that there are reasonable grounds for believing that enquiries are being conducted diligently and expeditiously into whether –
  - (a) the relevant suspect is a person subject to forces powers;
  - (b) if so, whether a service authority wishes to take any action over any forces offence constituted by the act on suspicion of which the relevant suspect was detained by the police;
  - (c) if so, whether and for what reasons that authority wishes to request the delivery of the relevant suspect into service custody for the purpose of that action; and
  - (d) if so, whether the Attorney General wishes to accede to that request.
- (5) The second condition is that there are reasonable grounds for believing that the relevant suspect’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.

### **PART 3**

#### **CIVILIAN OFFENCES AND POLICE POWERS RELATED TO DESERTION, ABSENCE WITHOUT LEAVE AND MALINGERING**

#### **7 Interpretation of Part 3**

In this Part –

“absence without leave” and “desertion” in relation to a person have the meanings they have under the forces law applicable to that person, and it is irrelevant whether the service from which that person is absent is in Jersey or elsewhere;

“unlawful absentee” means a service person who –

- (a) has deserted; or
- (b) is absent without leave.

#### **8 Offences related to desertion, absence without leave and malingering**

(1) In this Article –

“injury” includes any disease and any impairment of a person’s physical or mental condition;

“relevant civilian” means a person who –

- (a) is not subject to forces powers; and
- (b) is in Jersey, or is elsewhere but is resident in Jersey.

(2) A relevant civilian commits an offence if, knowing that another person is a service person or knowing the circumstances by virtue of which that other person is a service person, the relevant civilian –

- (a) intentionally causes the service person to be absent without leave;
- (b) aids, abets, counsels or procures the service person to commit an offence under forces law of –
  - (i) desertion, or
  - (ii) absence without leave;
- (c) knowing or believing the service person to have committed such an offence, intentionally impedes the service person’s apprehension or prosecution;
- (d) intending to cause the service person to avoid service or any particular duty or kind of duty –
  - (i) causes, aggravates or prolongs an injury to the service person, or

- 
- (ii) pretends to any person (including the service person) that the service person has an injury; or
  - (e) knowing or believing that the service person intends to avoid service or any particular duty or kind of duty, aids, abets, counsels or procures the service person to –
    - (i) cause, aggravate or prolong an injury to the service person, or
    - (ii) pretend to any other person that the service person has an injury.
  - (3) A relevant civilian who commits an offence under paragraph (2) is liable to imprisonment for a term of 2 years and to a fine.

#### **9 Arrest of deserter or absentee without leave**

- (1) A police officer may, in compliance with a request (whether specific or general) of a service authority to do so, arrest without warrant a person reasonably suspected of being an unlawful absentee.
- (2) The Magistrate may issue a warrant, addressed to a police officer, for the arrest of a person if satisfied by evidence given under oath or affirmation that –
  - (a) that person is or is reasonably suspected of being an unlawful absentee who is present in Jersey; and
  - (b) a service authority has made a request (whether specific or general) for the arrest of that person by a police officer.
- (3) A person arrested under this Article must as soon as practicable be transferred to service custody.

#### **10 Deserter or absentee without leave surrendering to civilian police**

- (1) This Article 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 police officer must, subject to paragraph (8), detain the person and take the person, or secure that the person is taken, to –
  - (a) a designated police station; or
  - (b) a police station other than a designated police station, if to do so would have been lawful under Article 28 of the Police Procedures Law if the person had been arrested by the police officer for an offence.
- (3) Paragraph (4) applies to the custody officer at the police station –
  - (a) at which the surrender occurs; or
  - (b) to which the person is brought under paragraph (2).
- (4) The custody officer must, subject to paragraph (8), detain the person for as long as is necessary for the custody officer to –
  - (a) consider the case and take action under paragraph (5); or

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- (b) arrange for the person to be brought, as soon as practicable, before the Magistrate for the case to be considered and action taken under paragraph (5).
- (5) The custody officer or the Magistrate, after considering the case under paragraph (4)(a) or (b) respectively, must –
- (a) if it appears that the person is not an unlawful absentee, order that the person should no longer be detained under this Article (without prejudice to whether he or she is to continue to be detained on any other basis); or
  - (b) if it appears that the person is an unlawful absentee –
    - (i) arrange for the person to be transferred to service custody, and, if necessary, continue the person’s detention pending that transfer,
    - (ii) if the person is also in custody for some other cause, notify a service authority, of the force from which the person appears to be absent, that it may make representations to the Attorney General as to whether the person should be transferred to service custody, or
    - (iii) if the person is not also in custody for some other cause, release the person subject to a condition that he or she 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 him or her to be taken into service custody.
- (6) If a person who is released under paragraph (5)(b)(iii) fails to comply with the condition subject to which the person was released, the Magistrate may issue a warrant for his or her arrest.
- (7) A person arrested under a warrant issued under paragraph (6) must as soon as practicable be transferred to service custody.
- (8) A police officer or custody officer detaining a person under paragraph (2) or (4) must –
- (a) ensure that prompt and reasonable efforts are made to seek evidence from a service authority as to whether the person is an unlawful absentee; and
  - (b) cease to detain the person under that paragraph if satisfied, on information from a service authority, that the person is not an unlawful absentee.
- (9) In this Article “custody officer”, “designated police station” and “police station” have the meanings that they have in the Police Procedures Law.

## PART 4

### OTHER CIVILIAN PROVISIONS

#### **11 Arrest by police of person specified in judge advocate warrant**

- (1) In this Article –

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“judge advocate warrant” means a warrant issued under section 313 of the Armed Forces Act;

“relevant overseas officer” means the officer of a UK police force, or of a British overseas territory police force, within the meaning of that section, to whom a judge advocate warrant is addressed;

“wanted person” means the person for whose arrest a judge advocate warrant is issued.

- (2) The Magistrate may, on the application of a police officer, issue a warrant for the arrest of a wanted person if –
  - (a) the police officer or the relevant overseas officer produces or repeats the evidence given under oath or affirmation on which the judge advocate warrant was issued; and
  - (b) the Magistrate has reasonable grounds for believing –
    - (i) that the wanted person is in Jersey, and
    - (ii) that there are reasonable grounds for the execution of the warrant in Jersey.
- (3) A warrant issued under this Article –
  - (a) must specify –
    - (i) the name of the wanted person, and
    - (ii) the offence recorded in the judge advocate warrant as the offence that the wanted person is alleged to have committed; and
  - (b) may be executed by any police officer who is in possession of the warrant, or of a copy of that warrant or the judge advocate warrant.
- (4) A person arrested under a warrant issued under this Article –
  - (a) must be shown, on being arrested, the warrant or copy mentioned in paragraph (3)(b); and
  - (b) must, as soon as practicable, be transferred –
    - (i) to the custody of the relevant overseas officer, or
    - (ii) to service custody.

## **12 Arrest by police of person unlawfully at large from service detention**

A person who has been sentenced to service detention, within the meaning of the forces law applicable to that person, and who is unlawfully at large under that forces law –

- (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 that forces law to be detained.

## **13 Offence of obstructing person subject to service law in course of duty**

- (1) A person (“the first person”) commits an offence if –

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- (a) the first person intentionally obstructs another person (“the other person”);
  - (b) the other person is subject to service law and is acting in the course of his or her duty; and
  - (c) the first person either –
    - (i) knows the circumstances by virtue of which the other person is subject to service law, or
    - (ii) has reasonable cause to believe that those circumstances exist.
- (2) A person guilty of an offence under this Article is liable to imprisonment for a term of 1 year and to a fine of level 3 on the standard scale.

#### **14 Offences relating to false information**

- (1) A person, other than a service person, commits an offence if he or she knowingly provides information that is false or misleading in a material particular in connection with a procedure prescribed by forces law for enlistment or attestation by that person or another person.
- (2) A person, other than a service person, commits an offence if he or she knowingly provides information that is false or misleading in a material particular in connection with an application or claim, by that person or another person, under regulations made under any provision of Part VIII of the Reserve Forces Act 1996 of the United Kingdom.
- (3) A person guilty of an offence under this Article is liable to imprisonment for a term of 1 year and to a fine of level 3 on the standard scale.

#### **15 Detention in prison**

A person in service custody may be detained in a prison, within the meaning of the Prison (Jersey) Law 1957<sup>4</sup>, if –

- (a) the service authority with custody of the person requests the use of the prison;
- (b) the governor of the prison, at his or her discretion, consents to the request; and
- (c) the detention is pending the person’s removal from Jersey for the purposes of the investigation of, or proceedings in respect of, a suspected forces offence.

#### **16 Evidence in civilian courts**

- (1) In proceedings for an offence before a civilian court under Article 8, 13 or 14, a relevant document is admissible to the same extent as it would be admissible, under any enactment of the United Kingdom forming part of forces law, in a court in England other than a service court, in proceedings for an offence under such an enactment.

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- (2) In this Article “relevant document” means a document, including a record or certificate, that purports to be issued by or on behalf of a service authority.

**17 Limits on enforcement in civilian courts in matters relating to service**

- (1) In this Article –
- “Her Majesty’s forces” does not include the forces of a country, other than the United Kingdom, that is a member of the Commonwealth;
- “relevant pay or pension” means any pay, pension, benefit, bounty, grant or allowance payable to a person in respect of that person’s, or any other person’s, service in Her Majesty’s forces.
- (2) No proceedings, whether under customary law or under any enactment, may be entertained by a civilian court with regard to –
- (a) any relevant pay or pension, other than by way of proceedings mentioned in paragraph (5);
- (b) the terms of a person’s service in Her Majesty’s forces; or
- (c) a person’s discharge from such service.
- (3) Each of the following is void –
- (a) an assignment of any relevant pay or pension;
- (b) a charge on any relevant pay or pension;
- (c) an agreement to assign or charge any relevant pay or pension.
- (4) No order may be made, whether under customary law or under any enactment, by a civilian court the effect of which would be –
- (a) to prevent a person from receiving any relevant pay or pension; and
- (b) to direct payment of it to another person.
- (5) Nothing in paragraph (3) or (4) –
- (a) applies to the making or variation of an order for the arrest of wages; or
- (b) prejudices any enactment providing for the payment of a sum to the Viscount or to a liquidator for distribution among creditors.
- (6) An item is not subject to arrest or distraint in any proceedings in a civilian court, whether under customary law or under any enactment, if the item is a weapon or other instrument, or an item of clothing or other equipment, that –
- (a) belongs to a member of any of Her Majesty’s forces; and
- (b) is used by that person in the course of his or her service in that force.

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**PART 5****MISCELLANEOUS AND CLOSING****18 Powers to make amendments to this and other enactments**

- (1) The States may by Regulations amend this Law to make such provision as appears to the States to be necessary or expedient in consequence of an amendment, made after the coming into force of this Law, of a provision of an enactment described in paragraph (2).
- (2) The enactments to which paragraph (1) applies are –
  - (a) forces law;
  - (b) the Visiting Forces Act 1952 of the United Kingdom, or any enactment under that Act; or
  - (c) the International Headquarters and Defence Organisations Act 1964 of the United Kingdom, or any enactment under that Act.
- (3) The States may by Regulations amend any enactment described in paragraph (4) to make such provision as they consider necessary or expedient for, or in connection with, the arrest, detention, release or transfer to service custody of persons who are, or who are reasonably believed to be –
  - (a) persons subject to forces powers;
  - (b) persons falling within Article 3(3); or
  - (c) persons otherwise liable to arrest or detention under any of Articles 9, 10, 11, 12 or 14.
- (4) The enactments to which paragraph (3) applies are –
  - (a) the Police Procedures Law;
  - (b) the Prison (Jersey) Law 1957;
  - (c) the Repatriation of Prisoners (Jersey) Law 2012<sup>5</sup>;
  - (d) any enactment under any Law mentioned in sub-paragraphs (a) to (c); and
  - (e) any other enactment making provision in relation to bail.
- (5) The States may by Regulations amend any of Articles 6, 9, 10 and 15 to make such provision as they consider necessary or expedient in consequence of the commencement, after the adoption of this Law by the States, of any enactment –
  - (a) making provision in relation to bail; or
  - (b) amending an enactment described in any of paragraphs (4)(a) to (4)(d).
- (6) The States may by Regulations amend any enactment described in paragraph (7) to make such provision as they consider necessary or expedient to make provision for, or in connection with, the use of vehicles and roads by persons subject to forces powers, persons falling within Article 3(3), and the forces of which those persons are members.
- (7) The enactments to which paragraph (6) applies are –

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- (a) the Motor Traffic (Third-Party Insurance) (Jersey) Law 1948<sup>6</sup>;
  - (b) the Motor Vehicle Registration (Jersey) Law 1993<sup>7</sup>;
  - (c) the Motor Vehicles (International Circulation) (Jersey) Law 1953<sup>8</sup>;
  - (d) any enactment under any Law mentioned in sub-paragraphs (a) to (c);
  - (e) the Road Traffic (Jersey) Law 1956<sup>9</sup>;
  - (f) the Motor Vehicles (Construction and Use) (Jersey) Order 1998<sup>10</sup>;  
and
  - (g) the Motor Vehicles (Driving Licences) (Jersey) Order 2003<sup>11</sup>.
- (8) The States may by Regulations amend any enactment, whether or not falling within any of the preceding paragraphs, to make such provision as they consider necessary or expedient in consequence of the coming into force of this Law.
- (9) Regulations under this Article may contain such transitional, consequential, incidental or supplementary provision as appears to the States to be necessary or expedient for the purposes of the Regulations.

#### **19 Citation and commencement**

This Law may be cited as the Armed Forces (Offences and Jurisdiction) (Jersey) Law 201- and comes into force on such day or days as the States may by Act appoint.

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- 1 *chapter 23.750*
  - 2 *chapter 07.455*
  - 3 *chapter 15.350*
  - 4 *chapter 23.775*
  - 5 *chapter 23.790*
  - 6 *chapter 25.250*
  - 7 *chapter 25.350*
  - 8 *chapter 25.400*
  - 9 *chapter 25.550*
  - 10 *chapter 25.550.08*
  - 11 *chapter 25.550.10*