



REPUBLIEK VAN SUID-AFRIKA

# STAATSKOERANT

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KANTOOR VAN DIE STAATSPRESIDENT

STATE PRESIDENT'S OFFICE

No. 1624.

27 Julie 1990

No. 1624.

27 July 1990

Hierby word bekend gemaak dat die Staatspresident sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

It is hereby notified that the State President has assented to the following Act which is hereby published for general information:—

 107 van 1990: Strafwysigingswet, 1990.

No. 107 of 1990: Criminal Law Amendment Act, 1990.

## CRIMINAL LAW AMENDMENT ACT, 1990

Act No. 107, 1990

## GENERAL EXPLANATORY NOTE:

- [**                    **]**    Words in bold type in square brackets indicate omissions from existing enactments.
- \_\_\_\_\_                    Words underlined with solid line indicate insertions in existing enactments.

# ACT

To amend the Criminal Procedure Act, 1977, so as to abolish the compulsory imposition of the sentence of death; to effect certain changes to the list of offences for which the sentence of death may be imposed; to make further provision in relation to the imposition of the sentence of death where it is a competent sentence; to lay down that a juvenile under a certain age may not be sentenced to death; to make provision for the attorney-general to appeal against the sentence imposed upon an accused in a criminal case; to vest a person sentenced to death with the right of appeal; to prohibit a court of appeal from imposing the sentence of death in lieu of or in addition to a punishment imposed by the trial court; to redefine the powers of the Appellate Division of the Supreme Court in considering an appeal against the sentence of death; to grant a different power to the Minister of Justice where he doubts the correctness of the conviction of a person sentenced to death; to make provision that a petition for mercy be submitted to the State President by or on behalf of a person under sentence of death; and to transfer to the said Minister a power of the State President in relation to the consideration of certain petitions; to amend the Magistrates' Courts Act, 1944, so as to confer jurisdiction in respect of murder upon a court of a regional division; to amend the Prisons Act, 1959, so as to make different provision in relation to the release of a prisoner serving a life sentence; and to provide for matters connected therewith.

(Afrikaans text signed by the State President.)  
(Assented to 28 June 1990.)

**B**E IT ENACTED by the State President and the Parliament of the Republic of South Africa, as follows:—

#### Amendment of section 1 of Act 51 of 1977

- 5    1. Section 1 of the Criminal Procedure Act, 1977 (hereinafter referred to as the principal Act), is hereby amended by the deletion in subsection (1) of paragraph (a) of the definition of "aggravating circumstances".

#### Amendment of section 145 of Act 51 of 1977, as amended by section 4 of Act 64 of 1982

- 10    2. Section 145 of the principal Act is hereby amended by the substitution for the proviso to subsection (2) of the following proviso:  
"Provided that where the offence in respect of which the accused is on trial is an offence for which the sentence of death is a competent sentence, the presiding

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judge shall, if he is of the opinion that, in the event of a conviction and having regard to the circumstances of the case, the sentence of death may be imposed [or may have to be imposed], summon two assessors to his assistance.”

**Amendment of section 276 of Act 51 of 1977**

- 5 3. Section 276 of the principal Act is hereby amended by the substitution for paragraph (b) of subsection (1) of the following paragraph:  
“(b) imprisonment, including imprisonment for life;”.

**Substitution of section 277 of Act 51 of 1977**

4. The following section is hereby substituted for section 277 of the principal Act:

## 10 “Sentence of death

277. (1) The sentence of death may be passed by a superior court only, and only in the case of a conviction for—

- (a) murder;  
15 (b) treason committed when the Republic is in a state of war;  
(c) robbery or attempted robbery, if the court finds aggravating circumstances to have been present;  
(d) kidnapping;  
(e) child-stealing;  
(f) rape.  
20 (2) The sentence of death shall be imposed—  
(a) after the presiding judge conjointly with the assessors (if any), subject to the provisions of section 145 (4) (a), or, in the case of a trial by a special superior court, that court, with due regard to any evidence and argument on sentence in terms of section 274, has  
25 made a finding on the presence or absence of any mitigating or aggravating factors; and  
(b) if the presiding judge or court, as the case may be, with due regard to that finding, is satisfied that the sentence of death is the proper sentence.  
30 (3) (a) The sentence of death shall not be imposed upon an accused who was under the age of 18 years at the time of the commission of the act which constituted the offence concerned.  
(b) If in the application of paragraph (a) the age of an accused is placed  
35 in issue, the onus shall be on the State to show beyond reasonable doubt that the accused was 18 years of age or older at the relevant time.”.

**Amendment of section 279 of Act 51 of 1977**

5. Section 279 of the principal Act is hereby amended by the substitution for paragraph (b) of subsection (1) of the following paragraph:

- 40 “(b) The said warrant shall not be executed until the Minister has in writing signed by himself given notice to the sheriff or his deputy that—  
(i) the Appellate Division of the Supreme Court has confirmed the sentence of death; and  
45 (ii) the State President has decided not to extend mercy to the person under sentence of death.”.

**Amendment of section 286 of Act 51 of 1977**

6. Section 286 of the principal Act is hereby amended by the deletion of paragraph (b) of subsection (2).

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**Amendment of section 290 of Act 51 of 1977, as amended by section 9 of Act 26 of 1987**

7. Section 290 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

- 5       “(3) Any court in which a person of or over the age of 18 years but under the age of 21 years is convicted of any offence [other than murder with reference to which—
- (a) the person concerned is not a woman convicted of the murder of her newly born child; or
- 10       (b) there are, in the opinion of the court, no extenuating circumstances]
- may, instead of imposing punishment upon him for that offence, order that he be placed under the supervision of a probation officer or that he be sent to a reform school as defined in section 1 of the Child Care Act, 1983.”.

**Amendment of section 309 of Act 51 of 1977, as amended by section 17 of Act 105 of 1982**

15   8. Section 309 of the principal Act is hereby amended by the substitution in subsection (3) for the words preceding the proviso of the following words:

- “The provincial or local division concerned shall thereupon have the powers referred to in section 304 (2), and, unless the appeal is based solely upon a question of law, the provincial or local division shall, in addition to such powers,
- 20       have the power to increase any sentence imposed upon the appellant or to impose any other form of sentence, excluding the sentence of death, in lieu of or in addition to such sentence:”.

**Insertion of section 310A in Act 51 of 1977**

9. The following section is hereby inserted in the principal Act after section 310:

25       “Appeal by attorney-general against sentence of lower court

- 310A. (1) The attorney-general may appeal against a sentence imposed upon an accused in a criminal case in a lower court, to the provincial or local division having jurisdiction, provided that an application for leave to appeal has been granted by a judge in chambers.
- 30       (2) (a) A written notice of such an application shall be lodged with the registrar of the provincial or local division concerned by the attorney-general, within a period of 30 days of the passing of sentence or within such extended period as may on application on good cause be allowed.
- 35       (b) The notice shall state briefly the grounds for the application.
- (3) The attorney-general shall, at least 14 days before the day appointed for the hearing of the application, cause to be served by the deputy sheriff upon the accused in person a copy of the notice, together with a written statement of the rights of the accused in terms of
- 40       subsection (4): Provided that if the deputy sheriff is not able so to serve a copy of the notice, it may be served in any other manner that may on application be allowed.
- (4) An accused may, within a period of 10 days of the serving of such a notice upon him, lodge a written submission with the registrar concerned, and the registrar shall submit it to the judge who is to hear the application, and shall send a copy thereof to the attorney-general.
- 45       (5) Subject to the provisions of this section, section 309 shall apply *mutatis mutandis* with reference to an appeal in terms of this section.

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5 (6) Upon an application for leave to appeal referred to in subsection (1) or an appeal in terms of this section, the judge or the court, as the case may be, may order that the State pay the accused concerned the whole or any part of the costs to which the accused may have been put in opposing the application or appeal, taxed according to the scale in civil cases of the provincial or local division concerned.”

**Amendment of section 315 of Act 51 of 1977, as substituted by section 20 of Act 105 of 1982**

10 10. Section 315 of the principal Act is hereby amended by the substitution for subsection (4) of the following subsection:

“(4) An appeal in terms of this Chapter shall lie only as provided in sections 316 to 319 inclusive, and, subject to the provisions of section 316A, not as of right.”.

**Insertion of sections 316A and 316B in Act 51 of 1977**

15 11. The following sections are hereby inserted in the principal Act after section 316:

“**Appeal against sentence of death**

20 **316A. (1)** Notwithstanding the provisions of section 316, an accused who has been sentenced to death may appeal against his conviction or sentence to the Appellate Division without applying for leave to appeal, if notice of appeal was given within a period of 21 days of the passing of the sentence or within such extended period as may on good cause be allowed, to the registrar of the Appellate Division and to the registrar of the provincial or local division concerned.

25 (2) The registrar of a court which has imposed the sentence of death shall forthwith notify the registrar of the Appellate Division of the passing of that sentence and shall transmit to the said registrar a certified copy of the record, including copies of the evidence, whether oral or documentary, taken or admitted at the trial, and a copy of the notice of appeal, if such notice has been filed: Provided that, instead of the whole record, with the consent of the accused and the attorney-general, copies (one of which shall be certified) may be transmitted of such parts of the record as may be agreed upon by the attorney-general and the accused to be sufficient, in which event the Appellate Division may nevertheless call  
30 for the production of the whole record.

35 (3) Notwithstanding the provisions of subsection (1) of this section, an accused who has been sentenced to death may apply, within the period and to a court or judge referred to in section 316 (1), for leave to lead further evidence, and the provisions of subsections (3), (4), (6), (7), (8) and (9) of section 316 shall apply *mutatis mutandis* with reference to such an application as if the convicted person had applied for leave to appeal.

40 (4) (a) When an accused who has been sentenced to death has not given notice of appeal as contemplated in subsection (1) or has not prosecuted the appeal after such notice has been given, his rights in terms of that subsection shall lapse, and the Chief Justice or any other judge of the Appellate Division designated by the Chief Justice shall appoint counsel to submit a written address to the Appellate Division on behalf of the accused, in which he shall argue the correctness of the conviction concerned and the propriety of the sentence of death.

45 (b) The registrar of the Appellate Division shall notify the accused and the attorney-general concerned of such an appointment.

50 (c) The attorney-general may also submit a written address to the Appellate Division regarding the correctness of the conviction and the propriety of the sentence of death.  
55

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- (5) (a) On receipt of the addresses contemplated in subsection (4), the case shall be reviewed in chambers by two judges of the Appellate Division designated by the Chief Justice.
- 5 (b) If the judges differ in opinion, the case shall also be reviewed in chambers by the Chief Justice or by any other judge of the Appellate Division to whom it has been referred by the Chief Justice.
- (c) The decision of the majority of the judges reviewing the case, shall be deemed to be the decision of all three.
- 10 (6) The judges reviewing a case may—
- (a) order that the case be argued before them at a time and place appointed;
- (b) refer the matter to the Appellate Division for consideration, whether upon argument or otherwise.
- 15 (7) The provisions of section 322 shall apply *mutatis mutandis* with reference to a review in terms of this section as if the review were an appeal: Provided that the conviction concerned shall not be set aside unless the case has been argued before the judges reviewing the case or before the Appellate Division, as the case may be, as if the review were an appeal.
- 20 (8) The decision of the judges reviewing a case shall be deemed to be the decision of the Appellate Division.

**Appeal by attorney-general against sentence of superior court**

- 25 **316B.** (1) Subject to subsection (2), the attorney-general may appeal to the Appellate Division against a sentence imposed upon an accused in a criminal case in a superior court.
- (2) The provisions of section 316 in respect of an application or appeal referred to in that section by an accused, shall apply *mutatis mutandis* with reference to a case in which the attorney-general appeals in terms of subsection (1) of this section.
- 30 (3) Upon an appeal in terms of subsection (1) or an application referred to in subsection (2), brought by the attorney-general, the court may order that the State pay the accused concerned the whole or any part of the costs to which the accused may have been put in opposing the appeal or application, taxed according to the scale in civil cases of that court.”
- 35

**Substitution of section 320 of Act 51 of 1977**

12. The following section is hereby substituted for section 320 of the principal Act:

**“Report of trial judge to be furnished on appeal**

- 40 **320.** The judge or judges, as the case may be, of any court before whom a person is convicted shall, in the case of an appeal under section 316, 316A or 316B or of an application for a special entry under section 317 or the reservation of a question of law under section 319 or an application to the court of appeal for leave to appeal or for a special entry under this Act, furnish to the registrar a report giving his or their opinion upon the case or upon any point arising in the case, and such report, which shall form part of the record, shall without delay be forwarded by the registrar to the registrar of the court of appeal.”
- 45

**Amendment of section 322 of Act 51 of 1977**

13. Section 322 of the principal Act is hereby amended—
- 50 (a) by the substitution for subsection (2) of the following subsection:
- “(2) Upon an appeal under section 316 or 316B against any sentence, the court of appeal may confirm the sentence or may delete or amend the sentence and impose such punishment as ought to have been imposed at the trial.”;
- 55 (b) by the insertion after subsection (2) of the following subsection:
- “(2A) Upon an appeal under section 316A against the sentence of death, the Appellate Division may—

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- (a) confirm the sentence of death; or  
 (b) if the Appellate Division is of the opinion that it would not itself have imposed the sentence of death, set aside the sentence and impose such punishment as it considers to be proper.”; and  
 5 (c) by the substitution for subsection (6) of the following subsection:  
 “(6) The powers conferred by this section upon the court of appeal in relation to the imposition of punishments, shall include the power to impose a punishment more severe than that imposed by the court below or to impose another punishment, excluding the sentence of death, in lieu of  
 10 or in addition to such punishment.”.

**Substitution of section 323 of Act 51 of 1977, as amended by section 25 of Act 105 of 1982**

14. The following section is hereby substituted for section 323 of the principal Act:

15 **“Submission by Minister to Appellate Division on behalf of person sentenced to death**

323. If the Minister, in any case in which a person has been sentenced to death, has any doubt as to the correctness of the conviction in question or the propriety of the sentence of death, the Minister may, on behalf and without the consent of the convicted person, refer a statement of the  
 20 ground for his doubt to the Appellate Division, and that court shall consider that statement at the appeal or review proceedings contemplated in section 316A.”.

**Insertion of section 325A in Act 51 of 1977**

15. The following section is hereby inserted in the principal Act after section 325:

25 **“Petition to State President to extend mercy to person under sentence of death**

325A. When the Appellate Division of the Supreme Court has, on appeal to it or at review proceedings in terms of section 316A, confirmed the sentence of death imposed upon any person, and that person has not  
 30 within 21 days of such confirmation of the sentence submitted a petition for mercy to the State President, the Minister or someone designated by him shall appoint counsel to submit, within 21 days or within such extended period as the Minister may in his discretion allow, such a petition on behalf of the person sentenced to death to the State  
 35 President.”.

**Amendment of section 327 of Act 51 of 1977**

16. Section 327 of the principal Act is hereby amended—

- (a) by the substitution for subsection (1) of the following subsection:  
 40 “(1) If any person convicted of any offence in any court or sentenced to death in respect of any offence, has in respect of the conviction or the sentence of death exhausted all the recognized legal procedures pertaining to appeal or review, or if such procedures are no longer available to him, and such person or his legal representative addresses the [State President] Minister by way of petition, supported by relevant affidavit, stating that  
 45 further evidence has since become available which materially affects his conviction or the sentence of death imposed upon him, the [State President] Minister may, if he considers that such further evidence, if true, might reasonably affect the conviction or the sentence of death, direct [the Minister to refer] that the petition and the relevant affidavits be referred to the court in which the conviction occurred or in which the sentence of death  
 50 was imposed.”; and  
 (b) by the substitution for paragraph (a) of subsection (7) of the following paragraph:

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“(a) a refusal by the **[State President]** Minister to issue a direction under subsection (1) or by the State President to act upon the finding or advice of the court under subsection (4) (a); or”.

Amendment of section 89 of Act 32 of 1944, as substituted by section 1 of Act 75 of 5 1959 and amended by section 7 of Act 91 of 1977

17. Section 89 of the Magistrates' Courts Act, 1944, is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) The court of a regional division shall have jurisdiction over all offences except treason **[and murder]**.”.

10 Substitution of section 64 of Act 8 of 1959, as amended by section 33 of Act 97 of 1986

18. The following section is hereby substituted for section 64 of the Prisons Act, 1959:

“Release of prisoner serving a life sentence

15 64. (1) A prisoner upon whom a life sentence has been imposed, shall not be released unless the advisory release board—

(a) after having been requested by the Minister to advise him in relation to that prisoner; and

20 (b) after considering a report of a release board, with due regard to the interests of society, has made a recommendation to the Minister for the release of the prisoner and the Minister has accepted that recommendation.

25 (2) If the Minister accepts the recommendation for the release of such a prisoner, he may authorize the release of the prisoner on the date recommended by the advisory release board or on any other date, either unconditionally or on probation or on parole as he may direct.”.

Reconsideration of sentences of certain persons under sentence of death

30 19. (1) (a) The Minister of Justice (hereinafter in this section referred to as the Minister) shall as soon as practicable after the commencement of this section, and after consultation with the Chief Justice, appoint a panel consisting of—

(i) six judges or retired judges of the Supreme Court of South Africa, of whom at least three shall be judges or retired judges of the Appellate Division; and

35 (ii) three other persons who in the opinion of the Minister are fit to serve on the panel on account of their knowledge of and experience in the administration of justice, to perform the functions assigned to the panel by this section.

(b) The Minister shall designate a judge or retired judge of the Appellate Division who serves on the panel as chairman of the panel.

40 (c) Subject to paragraphs (a) and (b), the Minister may from time to time designate a person to serve on the panel in the place of a member of the panel who for any reason is no longer able to serve on the panel.

45 (2) (a) The chairman of the panel may appoint one or more committees, each consisting of at least three members of the panel, of whom at least one shall be a judge or retired judge of the Appellate Division, who shall be the chairman of the committee.

(b) A committee shall consider any case contemplated in subsection (8) which is referred to it by the chairman of the panel.

50 (c) In considering any such case, a committee shall have all the powers and duties conferred or imposed upon the panel by this section, and any finding of a committee shall for all purposes be deemed to be the finding of the panel.

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(d) The provisions of subsections (4) and (7) shall apply *mutatis mutandis* with reference to a committee.

(3) A member of the panel who is not in the full-time service of the State shall in respect of his services as such a member be paid such remuneration and allowances as  
5 may be determined by the Minister with the concurrence of the Minister of Finance.

(4) The panel shall sit behind closed doors, and subject to the provisions of this section, no person shall be entitled to appear before the panel or to make a submission to the panel.

(5) The procedure at sessions of the panel and of a committee referred to in  
10 subsection (2) shall, subject to the provisions of this section, be determined by the chairman of the panel after consultation, where necessary, with the Director-General: Justice.

(6) The administrative work incidental to the performance of the functions of the panel shall be carried out by officials of the Department of Justice designated for that  
15 purpose by the Director-General: Justice.

(7) The finding of the majority of the members of the panel shall be the finding of the panel, and where a majority of the members of the panel cannot bring out a unanimous finding, the case concerned shall be referred to the Appellate Division of the Supreme Court as contemplated in subsection (12), as if the panel had made a  
20 finding referred to in paragraph (a) of that subsection.

(8) The panel shall consider the case of every person under sentence of death—

(a) who was sentenced to death before the date of commencement of section 4;  
and

(b) who has in respect of that sentence exhausted all the recognized legal  
25 procedures pertaining to appeal or review or no longer has such procedures at his disposal, whether or not such a person has lodged a petition referred to in section 327 of the principal Act,

excluding any person under sentence of death—

(i) whose sentence has already been considered by the Appellate Division  
30 within the meaning of section 20 as if section 4 had at all relevant times been in operation; or

(ii) whose sentence has been commuted by the State President.

(9) (a) For the purposes of subsection (8), the Director-General: Justice shall  
35 place at the disposal of the panel all court records, petitions received and other documents in his possession in relation to the trial, conviction and sentence of every convicted person concerned.

(b) A convicted person whose case is to be considered by the panel, and the attorney-general may within the period determined by the chairman of the panel furnish the Director-General: Justice with written arguments for  
40 submission to the panel.

(c) For the purposes of preparing such an argument, a convicted person shall be entitled to *pro Deo* representation as if the argument were drawn up with a view to an appeal against the sentence of death.

(10) After considering a case, the panel shall—

(a) make a finding as to whether or not, in the opinion of the panel, the  
45 sentence of death would probably have been imposed by the trial court concerned had section 277 of the principal Act, as substituted by section 4 of this Act, been in operation at the time sentence was passed; and

(b) inform the Minister in writing of its finding.

(11) (a) Where the panel finds that the sentence of death would probably not have  
50 been so imposed, the Minister shall further deal with the case in accordance with the known procedures which are followed in order to lay the case before the State President with a view to his possible extension of mercy to the convicted person.

(b) Notwithstanding such a finding of the panel, the Minister may, if he  
55 considers it desirable, refer the case to the Appellate Division of the Supreme Court, whereupon the provisions of subsection (12) shall apply in relation to the case concerned as if the panel had made a finding referred to in paragraph (a) of that subsection.

(12) (a) Where the panel finds that the sentence of death would probably have  
60 been imposed in the circumstances contemplated in subsection (10) (a), the Director-General: Justice shall forthwith transmit the requisite number of certified copies of the relevant court record and proceedings to the registrar

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of the Appellate Division of the Supreme Court, whereupon that court shall, irrespective of whether it has previously given a decision on appeal in the case concerned, consider the case in the same manner as if—

- 5 (i) it were considering an appeal by the convicted person against his sentence; and
- (ii) section 277 of the principal Act, as substituted by section 4 of this Act, were in operation at the time sentence was passed by the trial court.
- (b) The Appellate Division may—
- 10 (i) confirm the sentence of death;
- (ii) if the Appellate Division is of the opinion that it would not itself have imposed the sentence of death, set aside the sentence and impose such punishment as it considers to be proper; or
- 15 (iii) set aside the sentence of death and remit the case to the trial court with instructions to deal with any matter, including the hearing of evidence, in such manner as the Appellate Division may think fit, and thereafter to impose the sentence which in the opinion of the trial court would have been imposed had the said section 277 been so in operation.
- (c) A sentence imposed in terms of paragraph (b) (iii), shall for the purposes of any further appeal and all other purposes be deemed to be the sentence imposed upon the convicted person at his trial.
- 20 (d) No judge shall sit at the hearing of an appeal contemplated in paragraph (a) if he served on the panel when the case concerned was considered by the panel.
- (13) No appeal, review or other proceedings of whatever nature shall lie in respect
- 25 of—
- (a) any proceedings, finding or recommendation of the panel or of a committee referred to in subsection (2); or
- (b) any other act purported to have been performed by the Minister or anyone else in accordance with or in terms of a provision of this section.

## 30 Cases not yet finalized

20. (1) Any criminal case which commenced before the date of commencement of this section, and any appeal, application or proceedings in or in connection with such a case—

- 35 (a) shall be continued and concluded as if sections 4 and 13 (b) had at all relevant times been in operation;
- (b) shall, if sentence in the case concerned is passed on or after that date, be continued and concluded as if section 11 had also been so in operation.

(2) In the application of subsection (1) in respect of any case, appeal, application or proceedings referred to in that subsection, a court may, notwithstanding the

40 provisions of any other law, make such order for regulating the proceedings concerned as the circumstances may in the opinion of the court require.

(3) In an appeal referred to in subsection (1) against the sentence of death, the Appellate Division of the Supreme Court shall, in addition to any other power, have

45 instructions to deal with any matter, including the hearing of evidence, in such manner as the Appellate Division may think fit.

## Short title and commencement

21. (1) This Act shall be called the Criminal Law Amendment Act, 1990.

(2) Sections 5, 16, 17 and 18 shall come into operation on a date fixed by the State

50 President by proclamation in the *Gazette*.

(3) Different dates may be so fixed in respect of different provisions.