

DRAFT STATUTORY INSTRUMENTS

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**2013 No.**

**DEFENCE**

**The Armed Forces (Court Martial) (Amendment) Rules 2013**

*Made* - - - - 2013

*Coming into force* - - - - 1st August 2013

The Secretary of State in exercise of the powers conferred by sections 155 and 163 of the Armed Forces Act 2006(a), makes the following Rules:

In accordance with section 373(3) of the Armed Forces Act 2006 a draft of this instrument was laid before, and approved by resolution of, each House of Parliament.

**Citation and commencement**

1. These Rules may be cited as the Armed Forces (Court Martial) (Amendment) Rules 2013, and shall come into force on 1<sup>st</sup> August 2013.

**Interpretation**

2. In these Rules “the 2009 Rules” means the Armed Forces (Court Martial) Rules 2009(b).

**Proceedings requiring at least five lay members**

3.—(1) Rule 29 of the 2009 Rules is amended as follows.

(2) In rule 29(3), for “This rules applies to sentencing proceedings” substitute “Subject to rule 29A, this rule applies to sentencing proceedings”.

(3) In rule 29(4), for “This rule applies to variation proceedings” substitute “Subject to rule 29A, this rule applies to variation proceedings”.

4. After Rule 29 insert—

**“Disapplication of rule 29**

**29A.** Rule 29 does not apply to—

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(a) 2006 c. 52.  
(b) S.I. 2009/2041.

- (a) sentencing proceedings where the sole defendant has entered a guilty plea before the commencement of trial proceedings;
- (b) sentencing proceedings where there are two or more co-defendants, and each co-defendant has entered a guilty plea before the commencement of trial proceedings; and
- (c) variation proceedings where paragraph (a) or (b) applied to the sentencing proceedings in which the sentence which falls to be varied was imposed.”

**Certification of failure to comply with production order**

5. After rule 151 of the 2009 Rules, insert—

**“Certification of failure to comply with production order**

**151A.**—(1) The court’s powers to certify a failure to comply with a production order may be exercised only at a hearing under this rule.

(2) If so directed by a judge advocate, the court administration officer shall—

- (a) appoint a time and place for a hearing under this rule; and
- (b) notify the relevant person and the Director of the time and place so appointed.

(3) The relevant person and the Director are entitled to be heard at the hearing.

(4) The relevant person need not attend the hearing, but the court may exercise its powers in the relevant person’s absence.

(5) In this rule—

“production order” means an order under paragraph 5 of Schedule 1 to the Armed Forces (Powers of Stop and Search, Search, Seizure and Retention) Order 2009(a);

the reference to the court’s powers to certify a failure to comply with a production order is to its powers under paragraph 11A(2) of that Schedule; and

“the relevant person” means the person failing to comply.”

**Consequences of election for Court Martial trial**

6. In Schedule 2 to the 2009 Rules, omit Part 8.

Date

Minister of State  
Ministry of Defence

**EXPLANATORY NOTE**

*(This note is not part of the Rules)*

These Rules amend the Armed Forces (Court Martial) Rules 2009 (S.I. 2009/2041). Rule 29 of those rules require a minimum of five lay members to sit in the Court Martial in proceedings described in that rule. Rules 3 and 4 provide so that rule 29 does not apply to sentencing or variation proceedings where a sole defendant or all co-defendants have entered a guilty plea before the commencement of trial proceedings. In such proceedings section 155(1) of the Armed Forces Act 2006 (c. 52) applies so that there must be at least three, but not more than five, lay members.

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(a) S.I. 2009/2056. Paragraph 11A of Schedule 1 was inserted by article 9(6) of the Armed Forces (Powers of Stop and Search, Search, Seizure and Retention) (Amendment) Order 2012 (S.I. 2012/2919).

Under paragraph 5 of Schedule 1 to the Armed Forces (Powers of Stop and Search, Search, Seizure and Retention) Order 2009 (S.I. 2009/2056) a judge advocate may make an order requiring a person to produce material to a service policeman or to give a service policeman access to it. Paragraph 11A(2) of that Schedule enables the Court Martial to certify to a civilian court which has power to commit for contempt a failure to comply with an order under paragraph 5. Rule 5 inserts into the Armed Forces (Court Martial) Rules 2009 a new rule 151A, which prescribes a procedure for the exercise of the Court Martial's power to certify.

Rule 6 revokes Part 8 of Schedule 2 to the Armed Forces (Court Martial) Rules 2009, in consequence of the revocation of Part 20 of those rules by Schedule 5 to the Armed Forces Act 2011 (c. 18). Part 8 made transitional modifications to Part 20.

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£4.00

UK2013062427 07/2013 19585

<http://www.legislation.gov.uk/id/ukdsi/2013/9780111100370>

ISBN 978-0-11-110037-0



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