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DRAFT STATUTORY INSTRUMENTS

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**2013 No.**

**The Armed Forces (Retrial for Serious Offences) Order 2013**

**PART 8**

**Supplementary**

**Service of documents**

**26.** Rules made under section 49 of the 1968 Act<sup>(1)</sup> (Rules of court) are to apply to the service of documents under this Part as if they were documents required to be served under those Rules.

**Functions of the Director**

**27.—**(1) Section 365(4) of the 2006 Act does not apply to the provisions of this Order.

(2) In the absence of the Director, his functions under those provisions may be exercised by a prosecuting officer authorised by him.

(3) An authorisation under paragraph (2)—

- (a) may relate to a specified prosecuting officer or to a prosecuting officer of a specified description; and
- (b) may be general or relate to a specified function or specified circumstances.

**Powers exercisable by a single judge of the Court Martial Appeal Court**

**28.—**(1) The following powers under this Order may be exercised by a judge of the Court Martial Appeal Court in the same manner as they may be exercised by the Court Martial Appeal Court and subject to the same provisions—

- (a) to order under article 14(1)(a) the production of any document, exhibit or thing;
- (b) to order under article 14(1)(b) any witness who would be a compellable witness in proceedings pursuant to an order made on the application to attend for examination and be examined before the Court Martial Appeal Court;
- (c) to extend under article 13(6) the time for service;
- (d) to delay under article 16(8) the requirement of service on the acquitted person of an application for restrictions on publication; and
- (e) to give under article 13(3) a direction relating to attendance by live link.

(2) A single judge may, for the purposes of exercising any of the powers specified in paragraph (1), sit in such place as he appoints and may sit otherwise than in open court.

(3) Where a single judge exercises one of the powers set out in paragraph (1), the registrar must serve notice of the single judge's decision on all parties to the application under article 8(1).

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<sup>(1)</sup> Section 49 was amended by paragraph 9 of Schedule 1 to the Constitutional Reform Act 2005 (c. 4).

### **Powers exercisable by the registrar**

**29.**—(1) The registrar may require the Judge Advocate General, the judge advocate for any proceedings under this Order, or the court administration officer to furnish the Court Martial Appeal Court with any document (in addition to the record of proceedings) or information which the registrar considers the court may require for the purposes of exercising its jurisdiction under this Order.

(2) The following powers may be exercised by the registrar in the same manner as the Court Martial Appeal Court and subject to the same provisions—

- (a) to order under article 14(1)(a) the production of any document, exhibit or thing;
- (b) to order under article 14(1)(b) any witness who would be a compellable witness in proceedings pursuant to an order made on the application to attend for examination and be examined before the Court Martial Appeal Court;
- (c) to extend under article 13(6) the time for service; and
- (d) to give under article 13(3) a direction relating to attendance by live link.

(3) Where the registrar exercises any of the powers set out in paragraph (2) the registrar must serve notice of that decision on all parties to the application under article 8(1).

(4) Where the registrar has refused an application to exercise any of the powers referred to in paragraph (2), the applicant may have it determined by a judge of the Court Martial Appeal Court by serving a notice of renewal in the form set out as Form 6 in Schedule 2 within 14 days of the day on which notice of the registrar's decision is served on the applicant, unless that period is extended by the Court Martial Appeal Court.

### **Determination by the Court Martial Appeal Court**

**30.**—(1) Where a judge of the Court Martial Appeal Court has refused an application to exercise any of the powers referred to in article 28, the applicant may have that application determined by the Court Martial Appeal Court by serving a notice of renewal in the form set out as Form 6 in Schedule 2.

(2) A notice under paragraph (1) must be served on the registrar within 14 days of the day on which notice of the single judge's decision is served on the applicant, unless that period is extended by the Court Martial Appeal Court.

(3) If a notice under paragraph (1) is not served on the registrar within the period specified in paragraph (2) or such extended period as the Court Martial Appeal Court has allowed, the application must be treated as having been refused by the Court Martial Appeal Court.

### **Abandonment of the application**

**31.**—(1) An application under article 8(1) may be abandoned by the prosecuting officer before the hearing of that application by serving notice of abandonment in the form set out as Form 7 in Schedule 2 on the registrar and the acquitted person.

(2) On receiving notice of abandonment the registrar must—

- (a) date it;
- (b) serve a dated copy on the prosecuting officer and the acquitted person; and
- (c) treat the application as if it had been refused or dismissed by the Court Martial Appeal Court.