

---

## 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.

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.