

CRIMINAL JUSTICE AND COURTS ACT 2015

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 3 – Courts and Tribunals

Juries and members of the Court Martial

Schedule 14: Members of the Court Martial

555. Sections 71-74 create 4 new offences which may be committed by civilian jurors. It is important for the protections afforded to defendants in the civilian justice system to be replicated as far as possible in the service justice system. This Schedule inserts a new Schedule 2A to the Armed Forces Act 2006 to create 4 equivalent service offences.
556. These new offences will apply wherever the Court Martial sits. Whilst the Attorney General's consent will be required for proceedings for the civilian offence, as is normally the case in the service justice system his consent will not be required to prosecute the new service offences.
557. Paragraph 2 of Part 1 of this Schedule inserts a new section 163A into the Armed Forces Act 2006. New section 163A gives effect to a new Schedule 2A to be inserted into the Armed Forces Act 2006 and which makes provision about the new service offences.

New Schedule 2A to the Armed Forces Act 2006: Offences relating to members of the Court Martial

558. Paragraph 1 of new Schedule 2A to the Armed Forces Act 2006 defines "lay member" and "the trial period" for the purposes of that Schedule. The trial period is defined as beginning when the lay member is sworn to try the case and ends when proceedings terminate or the lay member is discharged. This is intended to limit the period of time during which the lay members can commit these offences. The offences under the Schedule may be committed by all lay members of the Court Martial (or, in the case of paragraph 5, a person) whether or not they are or were subject to service law or civilians subject to service discipline at the time of committing the offence.

Paragraph 2 of new Schedule 2A: Research by lay members

559. Paragraph 2 of new Schedule 2A creates the offence of research by lay members. This will make it an offence for a lay member intentionally to seek information where he or she knows, or ought reasonably to know, that the information sought is or may be relevant to the case.
560. Paragraphs 2(3) and (4) of new Schedule 2A set out more detail about the circumstances in which the offence will apply, including: the ways in which a person may seek information (sub-paragraph (3)) and types of information considered relevant to the case (sub-paragraph (4)).
561. Paragraph 2(5) and (6) of new Schedule 2A set out the circumstances in which a person would not be guilty of an offence. They include cases where the person needs the

*These notes refer to the Criminal Justice and Courts Act 2015
(c.2) which received Royal Assent on 12 February 2015*

information for a reason not connected with the case (sub-paragraph (5)), and where he or she seeks information from the judge advocate or a member of the Military Court Service (sub-paragraph (6)).

562. Paragraph 2(7) of new Schedule 2A sets out the penalty for an offence under this paragraph.

Paragraph 3 of new Schedule 2A: Sharing research with other lay members

563. Paragraph 3 of new Schedule 2A creates a new offence for a lay member intentionally to provide information to another lay member during the trial period if (a) the member contravened paragraph 2 of new Schedule 2A in the process of obtaining the information, and (b) the information has not been provided by the Court Martial in the course of the proceedings.

564. Paragraph 3(2) of new Schedule 2A defines information which has been provided to the Court Martial during the course of proceedings.

565. Paragraph 3(3) of new Schedule 2A sets out the penalty for an offence under this paragraph.

Paragraph 4 of new Schedule 2A: Engaging in other prohibited conduct

566. Paragraph 4 of new Schedule 2A creates a new offence for a lay member intentionally to engage in “prohibited conduct” during the trial period. Paragraph 4(2) of new Schedule 2A defines prohibited conduct as conduct from which it may be reasonably concluded that the person intends to make a finding or decision otherwise than on the basis of the evidence presented in the proceedings. Paragraph 4(3) of new Schedule 2A provides that an offence is committed whether or not the person knows the conduct is prohibited conduct. Paragraphs 4(4) and (5) of new Schedule 2A set out the circumstances where an offence is not committed under this paragraph.

567. Paragraph 4(6) of new Schedule 2A sets out the penalty for an offence under this paragraph.

Paragraph 5 of new Schedule 2A: Disclosing information about members’ deliberations

568. Paragraph 5 of new Schedule 2A makes it an offence for a person intentionally (a) to disclose information about statements made, opinions expressed, arguments advanced or votes cast by members of the Court Martial in the course of their deliberations, or (b) to solicit or obtain such information, subject to the exceptions in paragraphs 6 to 8.

569. Paragraph 5(2) of new Schedule 2A sets out the penalty for an offence under this paragraph where the person who is guilty of the offence was a member of the Court Martial for the proceedings, or at the time the offence was committed was a person subject to service law or a civilian subject to service discipline.

570. Paragraph 5(3) of new Schedule 2A sets out the penalty for any other person guilty of an offence, e.g. a civilian who is not a member of the Court Martial. Proceedings for such an offence against an individual subject neither to service law nor to service discipline (and not described in paragraph 5(2)) can only be instituted by or with the Attorney General’s consent as it is a civilian offence.

571. Paragraph 5(4) of new Schedule 2A provides that the Crown Court will have jurisdiction to try an offence under paragraph 5 committed in England and Wales by an individual subject neither to service law nor to service discipline (and not described in paragraph 5(2)), over whom the Court Martial would not have jurisdiction, notwithstanding that the members of the Court Martial may have been sitting in a Court Martial outside England and Wales.

Paragraphs 6 to 8 of new Schedule 2A: exceptions to [paragraph 5](#)

572. Paragraphs 6 to 8 of new Schedule 2A provide a series of exceptions to the paragraph 5 offence. Paragraph 6 provides for the “initial exceptions” which largely cover

excepted disclosures during the trial period. These permitted disclosures are allowed for the purposes of enabling the Court Martial to proceed and for the purpose of investigating a possible offence under paragraph 5. The disclosures may be made to a number of defined “relevant investigators”, such as a police force. Paragraph 7 then provides for “further exceptions” which are focused on post-trial disclosures to, in the first instance, the Court Martial Appeal Court, the Court of Appeal or other persons named in sub-paragraph (2), where the person making the disclosure believes that an irregularity has occurred in relation to a lay member. Sub-paragraphs (3) to (10) then make detailed provision for further disclosure to specified persons for particular purposes which ensures that a proper investigation can be conducted into any alleged irregularity. Paragraph 8 provides for “exceptions for soliciting disclosures or obtaining information” which are further exceptions relating to the permitted disclosures provided for in paragraphs 6 and 7 of new Schedule 2A.

Paragraph 9 of new Schedule 2A: Saving for contempt of court

573. Paragraph 9 of new Schedule 2A provides that paragraphs 2, 3 and 4 do not affect what constitutes contempt of court at common law nor what may be certified under section 311 of the Armed Forces Act 2006 (jurisdiction of the Court Martial) (the service court’s power to refer a potential contempt to a civilian court which has the power to commit for contempt).

Part 2 of Schedule 13: Further amendments

574. *Paragraph 5* of Part 2 of this Schedule amends section 50(2) of the Armed Forces Act 2006 (jurisdiction of the Court Martial) to add the new offences, other than an offence under paragraph 5 of new Schedule 2A committed by a person who was not a member of the Court Martial or subject to service law or service discipline to the definition of “service offences” in that subsection.
575. *Paragraph 6* of Part 2 of Schedule 13 amends section 51(3) of the Armed Forces Act 2006 to exclude the new offences from the jurisdiction of the Service Civilian Court.
576. *Paragraph 8* of Part 2 of this Schedule inserts two of the new service offences into Schedule 2 to the Armed Forces Act 2006. The offences in question are the offence under paragraph 4 of new Schedule 2A and the offence under paragraph 5 of that new Schedule, so far as committed by a person who was a member of the Court Martial or subject to service law or service discipline. The effect is that those offences will need to be referred to a service police force or the Director of Service Prosecutions under sections 113 and 116 of the Armed Forces Act 2006 for investigation.