

CRIMINAL JUSTICE AND COURTS ACT 2015

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 3 – Courts and Tribunals

Juries and members of the Court Martial

Section 68: Upper age limit for jury service to be 75

527. **Section 68** will increase the upper age limit for jury service from 70 to 75, enabling a person to serve as a juror up to their 76th birthday.

Section 69: Jurors and electronic communications devices

528. **Section 69** inserts new section 15A into the Juries Act 1974, and provides a discretionary power for a judge to order members of a jury to surrender their electronic communications devices for a period of time. Such an order would cover, for example, mobile phone or tablet devices that can be used to send messages or connect to the internet. The judge may only make an order if he or she considers that the order is necessary or expedient in the interests of justice, and that the terms of the order are a proportionate means of safeguarding those interests.
529. The order can specify a period for which the devices must be surrendered, but that period must be during one of the occasions set out in subsection (3) of new section 15A, such as when the members of the jury are in court, and the order may also be subject to exceptions (see subsection (4) of new section 15A).
530. Failure to surrender a device following such an order is a contempt of court (subsection (5)).
531. Paragraph 1 of Schedule 13 (introduced by section 75 of the Act) creates an identical power for senior coroners by amending Part 1 of the Coroners and Justice Act 2009.

Section 70: Jurors and electronic communications devices: powers of search etc

532. **Section 70** inserts a new section 54A into the Courts Act 2003. This new section provides the court with powers to enforce an order made under section 15A of the Juries Act 1974. It provides a specific power allowing a court security officer to search a juror for a device that a judge has ordered be surrendered (subsection (2) of new section 54A). If the search reveals a device which should have been surrendered then the officer must ask the juror to surrender the device, and if the juror refuses to do so, the officer may seize it (subsection (4) of new section 54A).
533. Subsection (3) of new section 54A places limits on the court security officer's power to require a person to remove clothing for the purposes of the search.
534. **Subsection (3)** of section 70 amends section 55 of the Courts Act 2003. It inserts a new subsection (1A) which provides that a court security officer may retain the article that

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was surrendered or seized until the end of the period specified in the order made under the Juries Act 1974.

535. *Paragraph 1* of Schedule 13 (introduced by section 75) creates a similar power of search for coroners' officers inserting new section 9B into the Coroners and Justice Act 2009. Subsection (8) of that new section makes provision equivalent to that in section 56 of the Courts Act 2003. This ensures that the Lord Chancellor can make regulations (subject to the negative procedure) in relation to the retention and disposal of articles surrendered by, or seized from, juries at inquests in the same way as he can make regulations under the Courts Act 2003 in relation to articles surrendered by, or seized from, other juries.
536. *Paragraph 2* extends court security officers' powers of search so that they can be used in connection with orders under new section 9B of the Coroners and Justice Act 2009.

Section 71: Research by jurors

537. *Section 71* inserts a new section 20A into the Juries Act 1974, which creates the offence of juror research. This will make it an offence for a juror intentionally to seek information during the "trial period" (defined in subsection (5)) where he or she knows, or ought to reasonably know, that the information sought is or may be relevant to the case.
538. Subsections (3) to (5) of new section 20A set out more detail about the circumstances in which the offence will apply, including: non-exhaustive lists of circumstances in which a person may be considered to be seeking information (subsection (3)) and of types of information considered relevant to the case (subsection (4)).
539. Subsections (6) and (7) of new section 20A set out circumstances in which a person would not be guilty of the research by jurors offence. They include cases where the person needs the information for a reason not connected with the case (subsection (6)), where he or she seeks information from the judge (subsection (7)(b)) and where the activity is done as part of his or her proper role as a juror (subsection (7)).
540. Subsections (8) and (9) of new section 20A set out the penalty for an offence under this section (imprisonment for up to 2 years or a fine or both) and provide that proceedings for such an offence can only be instituted by or with the consent of the Attorney General.
541. *Paragraph 5* of Schedule 13 (introduced by section 75) replicates the offence for members of the jury during an inquest by inserting new paragraph 5A into Part 1 of Schedule 6 to the Coroners and Justice Act 2009.

Section 72: Sharing research with other jurors

542. *Section 72* inserts a new section 20B into the Juries Act 1974. This makes it an offence for a juror to pass on to another juror information obtained through research in contravention of new section 20A of the Juries Act 1974 where the information was not provided by the court.
543. Subsections (3) and (4) of new section 20B set out the penalty for an offence under this section (imprisonment for up to 2 years or a fine or both) and provide that the consent of the Attorney General is required to institute proceedings for such an offence.
544. *Paragraph 5* of Schedule 13 (introduced by section 75) replicates the offence for members of the jury during an inquest by inserting new paragraph 5B into Part 1 of Schedule 6 to the Coroners and Justice Act 2009.

Section 73: Jurors engaging in other prohibited conduct

545. *Section 73* inserts new section 20C into the Juries Act 1974, which makes it an offence for a member of a jury trying a case before a court intentionally to engage in "prohibited conduct" during the trial period. Prohibited conduct is defined as conduct from which

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it may be reasonably concluded that the person intends to try the issue otherwise than on the basis of the evidence presented in the proceedings on the issue.

546. It does not matter whether or not the person knows the conduct is prohibited conduct. Subsections (4) and (5) of new section 20C set out the circumstances in which an offence is not committed under this section.
547. Subsections (6) and (7) of new section 20C set out the penalty for an offence under this section (imprisonment for up to 2 years or a fine or both) and provide that proceedings for such an offence can only be instituted by or with the consent of the Attorney General.
548. *Paragraph 5* of Schedule 13 (introduced by section 75) replicates this offence for members of the jury during an inquest by inserting new paragraph 5C into Part 1 of Schedule 6 to the Coroners and Justice Act 2009.

Section 74: Disclosing jury's deliberations

549. *Subsection (1)* introduces new sections 20D, 20E, 20F and 20G to the Juries Act 1974. These provisions deal with disclosure of jury deliberations, creating a criminal offence of disclosure of jury deliberations and exceptions to that offence.
550. New section 20D of the Juries Act 1974 creates the criminal offence. This covers the same conduct as section 8 of the Contempt of Court Act 1981, which is no longer to have effect in England and Wales (see *subsection (2)*). It is an offence for a person intentionally to disclose information about statements made, opinions expressed, arguments advanced or votes cast by members of a jury in the course of their deliberation in proceedings before a court, or to solicit or obtain such information. The sentence for this offence is imprisonment for a term not exceeding 2 years or a fine (or both), and proceedings can only be instituted by or with the Attorney General's consent.
551. Exceptions to this offence are contained in new sections 20E to 20G of the Juries Act 1974. These exceptions ensure that the offence does not operate so as to preclude proper investigations into alleged juror offences or irregularities. They allow jurors to reveal information about jury deliberations in certain defined circumstances.
552. Paragraph 5 of Schedule 13 (introduced by section 75) makes provision equivalent to new sections 20D to 20G of the Juries Act 1974 for members of the jury during an inquest by inserting new Part 1A into Schedule 6 to the Coroners and Justice Act 2009.

Section 75: Juries at inquests and Schedule 13: Juries at inquests

553. *Schedule 13* makes provision about juries at inquests and their deliberations including provision for surrender of electronic devices by jurors and provision creating offences of juror misconduct.

Section 76: Members of the Court Martial

554. *Section 76* gives effect to Schedule 14 which amends Chapter 2 of Part 7 of the Armed Forces Act 2006, and inserts a new Schedule 2A into that Act. New Schedule 2A creates new service offences and one new civilian offence relating to lay members and other members of the Court Martial and their deliberations. These offences mirror the new civilian juror offences created in sections 71-74 of this Act, adapted for the purposes of the service justice system.

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.

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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 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

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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

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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.

Section 77: Supplementary provision

577. *Subsection (1)* amends Schedule 1 to the Juries Act 1974 (persons disqualified for jury service) to provide that a person who at any time in the last 10 years has been convicted of any of the new offences inserted into the Juries Act 1974 or Schedule 6 to the Coroners and Justice Act 2009 or Schedule 2A to the Armed Forces Act 2006 by the provisions of this Act will be disqualified from undertaking jury service.
578. *Subsection (2)* makes clear that the creation of the new offences to be inserted in the Juries Act 1974 does not affect what constitutes contempt of court at common law. The common law of contempt of court is therefore unaffected by these new provisions. *Paragraph 7* of Schedule 13 makes equivalent provision in connection with the new offences inserted in the Coroners and Justice Act 2009.