

## SCHEDULES

### SCHEDULE 14

Section 76

#### MEMBERS OF THE COURT MARTIAL

##### PART 1

##### OFFENCES

- 1 The Armed Forces Act 2006 is amended as follows.
- 2 In Chapter 2 of Part 7 (trial by Court Martial: proceedings), after section 163 insert—

##### “163A Offences

Schedule 2A makes provision about offences relating to members of the Court Martial and their deliberations.”

- 3 After Schedule 2 insert—

##### “SCHEDULE 2A

Section 163A

#### OFFENCES RELATING TO MEMBERS OF THE COURT MARTIAL

##### Interpretation

- 1 (1) In this Schedule, “lay member” means a member of the Court Martial other than a judge advocate.
- (2) References in this Schedule to a member, or lay member, of the Court Martial are to any member, or lay member, whether or not the person is a person subject to service law or a civilian subject to service discipline.
- (3) In this Schedule, “the trial period”, in relation to a person specified as a lay member of the Court Martial for proceedings, is the period—
  - (a) beginning when the person is sworn to try the case, and
  - (b) ending when the proceedings terminate or, if earlier, when the lay member is discharged by the judge advocate.

##### Research by lay members

- 2 (1) It is an offence for a lay member of the Court Martial for proceedings to research the case that is the subject of the proceedings during the trial period, subject to the exceptions in sub-paragraphs (5) and (6).
- (2) A person researches a case if (and only if) the person—

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- (a) intentionally seeks information, and
  - (b) when doing so, knows or ought reasonably to know that the information is or may be relevant to the case.
- (3) The ways in which a person may seek information include—
- (a) asking a question,
  - (b) searching an electronic database, including by means of the internet,
  - (c) visiting or inspecting a place or object,
  - (d) conducting an experiment, and
  - (e) asking another person to seek the information.
- (4) Information relevant to the case includes information about—
- (a) a person involved in events relevant to the case,
  - (b) the judge advocate for the proceedings,
  - (c) any other person involved in the trial, whether as a lawyer, a witness or otherwise,
  - (d) the law relating to the case,
  - (e) the law of evidence, and
  - (f) Court Martial procedure.
- (5) It is not an offence under this paragraph for a person to seek information if the person needs the information for a reason which is not connected with the case.
- (6) It is not an offence under this paragraph for a person—
- (a) to attend the proceedings in question;
  - (b) to seek information from the judge advocate for the proceedings;
  - (c) to seek information from the court administration officer or from a member of the Military Court Service;
  - (d) to do anything which the Judge Advocate General directs or authorises the person to do;
  - (e) to do anything which the judge advocate dealing with the issue directs or authorises the person to do;
  - (f) to seek information from another lay member of the Court Martial for the proceedings, unless the person knows or ought reasonably to know that the other lay member contravened this paragraph in the process of obtaining the information;
  - (g) to do anything else which is reasonably necessary in order for the Court Martial to make a finding on a charge or pass a sentence.
- (7) A person guilty of an offence under this paragraph is liable to any punishment mentioned in the Table in section 164, but a sentence of imprisonment imposed in respect of the offence must not exceed two years.

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### **Sharing research with other lay members**

- 3 (1) It is an offence for a lay member of the Court Martial for proceedings intentionally to disclose information to another lay member of that court for the proceedings during the trial period if—
- (a) the lay member contravened paragraph 2 in the process of obtaining the information, and
  - (b) the information has not been provided to the Court Martial during the course of the proceedings.
- (2) Information has been provided to the Court Martial during the course of the proceedings if (and only if) it has been provided as part of—
- (a) evidence presented in the proceedings,
  - (b) information provided to a lay member or the lay members during the trial period by the court administration officer or a member of the Military Court Service, or
  - (c) other information provided to a lay member or the lay members during the trial period by, or with the permission of, the judge advocate dealing with the issue.
- (3) A person guilty of an offence under this paragraph is liable to any punishment mentioned in the Table in section 164, but a sentence of imprisonment imposed in respect of the offence must not exceed two years.

### **Engaging in other prohibited conduct**

- 4 (1) It is an offence for a lay member of the Court Martial for proceedings intentionally to engage in prohibited conduct during the trial period, subject to the exceptions in sub-paragraphs (4) and (5).
- (2) “Prohibited conduct” means conduct from which it may reasonably be concluded that the person intends to make a finding on a charge or a decision about a sentence otherwise than on the basis of the evidence presented in the proceedings.
- (3) An offence under this paragraph is committed whether or not the person knows that the conduct is prohibited conduct.
- (4) It is not an offence under this paragraph for a person to research the case that is the subject of the proceedings (as defined in paragraph 2(2) to (4)).
- (5) It is not an offence under this paragraph for a person to disclose information to another lay member of the Court Martial.
- (6) A person guilty of an offence under this paragraph is liable to any punishment mentioned in the Table in section 164, but a sentence of imprisonment imposed in respect of the offence must not exceed two years.

### **Disclosing information about members’ deliberations etc**

- 5 (1) It is an offence for a person intentionally—

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- (a) to disclose information about statements made, opinions expressed, arguments advanced or votes cast by members of the Court Martial for proceedings in the course of their deliberations, or
  - (b) to solicit or obtain such information,
- subject to the exceptions in paragraphs 6 to 8.
- (2) Where a person guilty of an offence under this paragraph—
    - (a) was a member of the Court Martial for the proceedings, or
    - (b) at the time the offence was committed, was a person subject to service law or a civilian subject to service discipline,
 the person is liable to any punishment mentioned in the Table in section 164, but any sentence of imprisonment imposed in respect of the offence must not exceed two years.
  - (3) Where any other person is guilty of an offence under this paragraph—
    - (a) the person is liable, on conviction on indictment, to imprisonment for a term not exceeding two years or a fine (or both), and
    - (b) proceedings for the offence may not be instituted except by or with the consent of the Attorney General.
  - (4) The Crown Court has jurisdiction to try an offence under this paragraph committed in England and Wales other than by a person described in sub-paragraph (2), including an offence committed in respect of deliberations of members of the Court Martial sitting outside England and Wales.

**Disclosing information about members’ deliberations etc: initial exceptions**

- 6 (1) It is not an offence under paragraph 5 for a person to disclose information in the proceedings mentioned in paragraph 5(1)—
  - (a) for the purposes of enabling the Court Martial to make a finding on a charge or pass a sentence, or
  - (b) in connection with the delivery of the findings or sentence.
- (2) It is not an offence under paragraph 5 for the judge advocate for those proceedings to disclose information—
  - (a) for the purposes of dealing with the proceedings, or
  - (b) for the purposes of an investigation by a relevant investigator into whether an offence or contempt of court has been committed by or in relation to a lay member in the proceedings mentioned in paragraph 5(1).
- (3) It is not an offence under paragraph 5 for a person who reasonably believes that a disclosure described in sub-paragraph (2)(b) has been made to disclose information for the purposes of the investigation.
- (4) It is not an offence under paragraph 5 to publish information disclosed as described in sub-paragraph (1) or (2)(a) in the proceedings mentioned in paragraph 5(1).
- (5) In this paragraph—

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“publish” means make available to the public or a section of the public;

“relevant investigator” means—

- (a) a police force listed in section 375;
- (b) the Attorney General;
- (c) any other person or class of person specified by the Lord Chancellor for the purposes of this paragraph by regulations.

- (6) The Lord Chancellor must obtain the consent of the Lord Chief Justice of England and Wales before making regulations under this paragraph.

### **Disclosing information about members’ deliberations etc: further exceptions**

- 7 (1) It is not an offence under paragraph 5 for a person to disclose information to a person listed in sub-paragraph (2) if—
  - (a) the disclosure is made after the proceedings mentioned in paragraph 5(1) terminate, and
  - (b) the person making the disclosure reasonably believes that—
    - (i) an offence or contempt of court has been, or may have been, committed by or in relation to a lay member in connection with those proceedings, or
    - (ii) conduct of a lay member in connection with those proceedings may provide grounds for an appeal against conviction or sentence.
- (2) Those persons are—
  - (a) a member of a police force listed in section 375;
  - (b) a judge of the Court of Appeal;
  - (c) a judge of the Court Martial Appeal Court;
  - (d) the registrar of criminal appeals;
  - (e) the judge advocate who dealt with the proceedings mentioned in paragraph 5(1);
  - (f) the court administration officer for the Court Martial;
  - (g) a member of the Military Court Service who would reasonably be expected to disclose the information only to a person mentioned in paragraphs (b) to (f).
- (3) It is not an offence under paragraph 5 for a member of a police force listed in section 375 to disclose information for the purposes of obtaining assistance in deciding whether to submit the information to—
  - (a) a judge of the Court of Appeal,
  - (b) a judge of the Court Martial Appeal Court, or
  - (c) the registrar of criminal appeals,provided that the disclosure does not involve publishing the information.
- (4) It is not an offence under paragraph 5 for a judge of the Court of Appeal, a judge of the Court Martial Appeal Court or the registrar of criminal appeals to disclose information for the purposes of an investigation by a relevant investigator into—

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- (a) whether an offence or contempt of court has been committed by or in relation to a lay member in connection with the proceedings mentioned in paragraph 5(1), or
  - (b) whether conduct of a lay member in connection with those proceedings may provide grounds for an appeal against conviction or sentence.
- (5) It is not an offence under paragraph 5 for a judge of the Court of Appeal, a judge of the Court Martial Appeal Court or the registrar of criminal appeals to disclose information for the purposes of enabling or assisting—
  - (a) a person who was the defendant in the proceedings mentioned in paragraph 5(1), or
  - (b) a legal representative of such a person,to consider whether conduct of a lay member in connection with those proceedings may provide grounds for an appeal against conviction or sentence.
- (6) It is not an offence under paragraph 5 for a person who reasonably believes that a disclosure described in sub-paragraph (4) or (5) has been made to disclose information for the purposes of the investigation or consideration in question.
- (7) It is not an offence under paragraph 5 for a person to disclose information in evidence in—
  - (a) proceedings for an offence or contempt of court alleged to have been committed by or in relation to a lay member in connection with the proceedings mentioned in paragraph 5(1),
  - (b) proceedings on an appeal, or an application for leave to appeal, against a decision in the proceedings mentioned in paragraph 5(1) where an allegation relating to conduct of or in relation to a lay member forms part of the grounds of appeal, or
  - (c) proceedings on any further appeal or reference arising out of proceedings mentioned in paragraph (a) or (b).
- (8) It is not an offence under paragraph 5 for a person to disclose information in the course of taking reasonable steps to prepare for proceedings described in sub-paragraph (7)(a) to (c).
- (9) It is not an offence under paragraph 5 to publish information disclosed as described in sub-paragraph (7).
- (10) In this paragraph—
  - “publish” means make available to the public or a section of the public;
  - “relevant investigator” means—
    - (a) a police force listed in section 375;
    - (b) the Attorney General;
    - (c) the Criminal Cases Review Commission;
    - (d) the Crown Prosecution Service;
    - (e) the Service Prosecuting Authority;

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(f) any other person or class of person specified by the Lord Chancellor for the purposes of this paragraph by regulations.

(11) The Lord Chancellor must obtain the consent of the Lord Chief Justice of England and Wales before making regulations under this paragraph.

### **Disclosing information about members' deliberations: exceptions for soliciting disclosures or obtaining information**

8 (1) It is not an offence under paragraph 5 to solicit a disclosure described in paragraph 6(1) to (4) or paragraph 7(1) to (9).

(2) It is not an offence under paragraph 5 to obtain information—

(a) by means of a disclosure described in paragraph 6(1) to (4) or paragraph 7(1) to (9), or

(b) from a document that is available to the public or a section of the public.

### **Saving for contempt of court**

9 Nothing in paragraph 2, 3 or 4 affects what constitutes contempt of court at common law or what may be certified under section 311.”

## **PART 2**

### **FURTHER AMENDMENTS**

4 The Armed Forces Act 2006 is amended as follows.

5 In section 50(2) (jurisdiction of the Court Martial: service offences), after paragraph (f) insert—

“(fa) an offence under paragraph 2, 3 or 4 of Schedule 2A (offences committed by a lay member of the Court Martial);

(fb) an offence under paragraph 5 of that Schedule (disclosing information about members' deliberations etc) committed by a person described in sub-paragraph (2) of that paragraph;”.

6 In section 51(3) (jurisdiction of the Service Civilian Court: excluded offences), after paragraph (c) insert—

“(ca) an offence under paragraph 2, 3, 4 or 5 of Schedule 2A (offences relating to members of the Court Martial);”.

7 In section 373 (orders, regulations and rules), after subsection (1) insert—

“(1A) The powers conferred by paragraphs 6 and 7 of Schedule 2A on the Lord Chancellor to make regulations are exercisable by statutory instrument.”

8 In Schedule 2 (offences required to be referred to a service police force or the Director of Service Prosecutions under sections 113 and 116), at the end insert—

“14 An offence under paragraph 4 of Schedule 2A (lay member of the Court Martial engaging in prohibited conduct).

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- 15           An offence under paragraph 5 of Schedule 2A (disclosing information about the deliberations of members of the Court Martial) committed by a person described in sub-paragraph (2) of that paragraph.”
- 9           The reference in section 286(4) of the Armed Forces Act 2006 (hearing by the Court Martial of appeals from Service Civilian Court) to Part 7 of that Act includes the provisions inserted in that Part by this Schedule.