
STATUTORY INSTRUMENTS

1988 No. 1987

The Criminal Evidence (Northern Ireland) Order 1988

Circumstances in which inferences may be drawn from accused's failure to mention particular facts when questioned, charged, etc.

3.—(1) Where, in any proceedings against a person for an offence, evidence is given that the accused—

- (a) at any time before he was charged with the offence, on being questioned^[F1] under caution] by a constable trying to discover whether or by whom the offence had been committed, failed to mention any fact relied on in his defence in those proceedings; or
- (b) on being charged with the offence or officially informed that he might be prosecuted for it, failed to mention any such fact,

being a fact which in the circumstances existing at the time the accused could reasonably have been expected to mention when so questioned, charged or informed, as the case may be, paragraph (2) applies.

(2) Where this paragraph applies—

- (a) the court, in determining whether to commit the accused for trial or whether there is a case to answer;
- (b) a judge, in deciding whether to grant an application made by the accused under
 - ^[F2](i) Article 5 of the Criminal Justice (Serious Fraud) (Northern Ireland) Order 1988^{F3} (application for dismissal of charge where a case of fraud has been transferred from a magistrates' court to the Crown Court under Article 3 of that Order);^[F4] or]
 - ^[F4](ii) paragraph 4 of Schedule 1 to the Children's Evidence (Northern Ireland) Order 1995 (application for dismissal of charge of violent or sexual offence involving child in respect of which notice of transfer has been given under Article 4 of that Order); and]
- (c) the court or jury, in determining whether the accused is guilty of the offence charged,

may—

- (i) draw such inferences from the failure as appear proper;

Head (ii) rep. by 1996 NI 24

^[F5](2A) Where the accused was at an authorised place of detention at the time of the failure, paragraphs (1) and (2) do not apply if he had not been allowed an opportunity to consult a solicitor prior to being questioned, charged or informed as mentioned in paragraph (1).]

(3) Subject to any directions by the court, evidence tending to establish the failure may be given before or after evidence tending to establish the fact which the accused is alleged to have failed to mention.

(4) This Article applies in relation to questioning by persons (other than constables) charged with the duty of investigating offences or charging offenders as it applies in relation to questioning by constables; and in paragraph (1) “officially informed” means informed by a constable or any such person.

- (5) This Article does not—

Status: Prospective version(s) available.

Changes to legislation: The Criminal Evidence (Northern Ireland) Order 1988, Section 3 is up to date with all changes known to be in force on or before 15 December 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) [View outstanding changes](#)

- (a) prejudice the admissibility in evidence of the silence or other reaction of the accused in the face of anything said in his presence relating to the conduct in respect of which he is charged, in so far as evidence thereof would be admissible apart from this Article; or
 - (b) preclude the drawing of any inference from any such silence or other reaction of the accused which could be drawn apart from this Article.
- (6) This Article does not apply in relation to a failure to mention a fact if the failure occurred before the commencement of this Article.

- F1** [1994 c. 33](#)
- F2** [1995 NI 3](#)
- F3** [1988 NI 16](#)
- F4** [1995 NI 3](#)
- F5** [Art. 3\(2A\) inserted \(1.3.2007\) by Criminal Evidence \(Northern Ireland\) Order 1999 \(S.I. 1999/2789 \(N.I. 8\)\), arts. 1\(2\), 36\(3\); S.R. 2007/176, art. 2](#)

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Changes and effects yet to be applied to :

- Instrument am (prosp) by [1994 c. 33 s. 168\(2\)Sch.10 para 61](#)
- Instrument rev in pt (prosp) by [1994 c. 33 s. 168\(3\)Sch.11](#)
- art. 3(2)(a) words inserted by [2015 c. 9 \(N.I.\) Sch. 2 para. 5\(1\)\(a\)](#)
- art. 3(2)(b)(ii) words substituted in earlier affecting provision [2015 c. 9 \(N.I.\), Sch. 2 para. 5\(1\)\(b\)](#) by [2022 c. 4 \(N.I.\) s. 4\(9\)\(d\)](#)

Changes and effects yet to be applied to the whole Order associated Parts and Chapters:

Whole provisions yet to be inserted into this Order (including any effects on those provisions):

- art. 3(2)(b)(iii) and word substituted for word by [2015 c. 9 \(N.I.\) Sch. 2 para. 5\(1\)\(b\)](#)
- art. 5(2)(aa)(iii) and word substituted for word by [2015 c. 9 \(N.I.\) Sch. 2 para. 5\(2\)\(b\)](#)
- art. 5(2)(aa)(iii) words substituted in earlier affecting provision [2015 c. 9 \(N.I.\), Sch. 2 para. 5\(2\)\(b\)](#) by [2022 c. 4 \(N.I.\) s. 4\(9\)\(d\)](#)
- art. 6(2)(aa)(iii) and word substituted for word by [2015 c. 9 \(N.I.\) Sch. 2 para. 5\(3\)\(b\)](#)
- art. 6(2)(aa)(iii) words substituted in earlier affecting provision [2015 c. 9 \(N.I.\), Sch. 2 para. 5\(3\)\(b\)](#) by [2022 c. 4 \(N.I.\) s. 4\(9\)\(d\)](#)