
STATUTORY INSTRUMENTS

1988 No. 1987

The Criminal Evidence (Northern Ireland) Order 1988

Inferences from failure or refusal to account for objects, marks, etc.

5.—(1) Where—

- (a) a person is arrested by a constable, and there is—
 - (i) on his person; or
 - (ii) in or on his clothing or footwear; or
 - (iii) otherwise in his possession; or
 - (iv) in any place in which he is at the time of his arrest, any object, substance or mark, or there is any mark on any such object; and
- (b) [^{F1}that or another constable investigating the case] reasonably believes that the presence of the object, substance or mark may be attributable to the participation of the person arrested in the commission of an offence specified by the constable; and
- (c) the constable informs the person arrested that he so believes, and requests him to account for the presence of the object, substance or mark; and
- (d) the person fails or refuses to do so,

then if, in any proceedings against the person for the offence so specified, evidence of those matters is given, 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;

[^{F2}(aa) a judge, in deciding whether to grant an application made by the accused under

[Article 5 of the Criminal Justice (Serious Fraud) (Northern Ireland) Order 1988
^{F3}(i)] (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]

[paragraph 4 of Schedule 1 to the Children's Evidence (Northern Ireland) Order 1995
^{F4}(ii) (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]]

(b) the court or jury, in determining whether the accused is guilty of the offence charged, may—

- (i) draw such inferences from the failure or refusal as appear proper;
- Head (ii) rep. by 1996 NI 24*

(3) Paragraphs (1) and (2) apply to the condition of clothing or footwear as they apply to a substance or mark thereon.

[^{F5}(3A) This Article applies in relation to officers of customs and excise as it applies in relation to constables.]

Changes to legislation: *The Criminal Evidence (Northern Ireland) Order 1988, Section 5 is up to date with all changes known to be in force on or before 20 April 2024. 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*

(4) Paragraphs (1) and (2) do not apply unless the accused was told in ordinary language by the constable when making the request mentioned in paragraph (1)(c) what the effect of this Article would be if he failed or refused to comply with the request.

[^{F6}(4A) Where the accused was at an authorised place of detention at the time of the failure or refusal, paragraphs (1) and (2) do not apply if he had not been allowed an opportunity to consult a solicitor prior to the request being made.]

(5) This Article does not preclude the drawing of any inference from a failure or refusal to account for the presence of an object, substance or mark or from the condition of clothing or footwear which could properly be drawn apart from this Article.

(6) This Article does not apply in relation to a failure or refusal which occurred before the commencement of this Article.

F1 [1994 c. 33](#)

F2 [1994 c. 33](#)

F3 [1995 NI 3](#)

F4 [1995 NI 3](#)

F5 [1994 c. 33](#)

F6 [Art. 5\(4A\) inserted \(1.3.2007\) by Criminal Evidence \(Northern Ireland\) Order 1999 \(S.I. 1999/2789 \(N.I. 8\)\), arts. 1\(2\), 36\(4\); 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. 5(2)(a) words inserted by [2015 c. 9 \(N.I.\) Sch. 2 para. 5\(2\)\(a\)](#)

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\(9\)\(d\)](#)