



Criminal Justice and Public Order Act 1994

1994 CHAPTER 33

PART III

COURSE OF JUSTICE: EVIDENCE, PROCEDURE, ETC.

Inferences from accused's silence

34 Effect of accused's failure to mention facts when questioned or charged.

- (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 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, subsection (2) below applies.
- (2) Where this subsection applies—
- [^{F1}(a) a magistrates' court inquiring into the offence as examining justices;]
 - (b) a judge, in deciding whether to grant an application made by the accused under—
 - (i) section 6 of the ^{M1}Criminal Justice Act 1987 (application for dismissal of charge of serious fraud in respect of which notice of transfer has been given under section 4 of that Act); or
 - (ii) paragraph 5 of Schedule 6 to the ^{M2}Criminal Justice Act 1991 (application for dismissal of charge of violent or sexual offence

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involving child in respect of which notice of transfer has been given under section 53 of that Act);

(c) the court, in determining whether there is a case to answer;
and

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

may draw such inferences from the failure as appear proper.

(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 section 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 subsection (1) above “officially informed” means informed by a constable or any such person.

(5) This section does not—

(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 section; or

(b) preclude the drawing of any inference from any such silence or other reaction of the accused which could properly be drawn apart from this section.

(6) This section does not apply in relation to a failure to mention a fact if the failure occurred before the commencement of this section.

^{F2}(7)

Textual Amendments

F1 S. 34(2)(a) substituted (5.7.1996) by 1996 c. 25, s. 44(3)(7) (with s. 78(1))

F2 S. 34(7) repealed (5.7.1996) by 1996 c. 25, ss. 44(4)(7), 80, Sch. 5 Table 1, Note 2 (with s. 78(1))

Modifications etc. (not altering text)

C1 S. 34: power to apply (with modifications) conferred (E.W.) (1.10.2002) by 2002 c. 30, s. 36(1)(c); S.I. 2002/2306, art. 2(c)(iii)

S. 34: power to apply (with modifications) conferred (E.W.) (1.10.2002) by 1997 c. 50, s. 37(2A)(d) (as inserted (1.10.2002) by 2002 c. 30, s. 88(2); S.I. 2002/2306, art. 2(f)(iv))

S. 34: power to apply (with modifications) conferred (E.W.) (1.10.2002) by 1997 c. 50, s. 81(2A)(d) (as inserted (1.10.2002) by 2002 c. 30, s. 88(2); S.I. 2002/2306, art. 2(f)(iv))

C2 Ss. 34-38 applied (with modifications) (1.2.1997) by S.I. 1997/16, art. 2(1)(2), Sch.

Marginal Citations

M1 1987 c. 38.

M2 1991 c. 53.

35 Effect of accused's silence at trial.

(1) At the trial of any person ^{F3}. . . for an offence, subsections (2) and (3) below apply unless—

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- (a) the accused's guilt is not in issue; or
- (b) it appears to the court that the physical or mental condition of the accused makes it undesirable for him to give evidence;

but subsection (2) below does not apply if, at the conclusion of the evidence for the prosecution, his legal representative informs the court that the accused will give evidence or, where he is unrepresented, the court ascertains from him that he will give evidence.

- (2) Where this subsection applies, the court shall, at the conclusion of the evidence for the prosecution, satisfy itself (in the case of proceedings on indictment, in the presence of the jury) that the accused is aware that the stage has been reached at which evidence can be given for the defence and that he can, if he wishes, give evidence and that, if he chooses not to give evidence, or having been sworn, without good cause refuses to answer any question, it will be permissible for the court or jury to draw such inferences as appear proper from his failure to give evidence or his refusal, without good cause, to answer any question.
- (3) Where this subsection applies, the court or jury, in determining whether the accused is guilty of the offence charged, may draw such inferences as appear proper from the failure of the accused to give evidence or his refusal, without good cause, to answer any question.
- (4) This section does not render the accused compellable to give evidence on his own behalf, and he shall accordingly not be guilty of contempt of court by reason of a failure to do so.
- (5) For the purposes of this section a person who, having been sworn, refuses to answer any question shall be taken to do so without good cause unless—
 - (a) he is entitled to refuse to answer the question by virtue of any enactment, whenever passed or made, or on the ground of privilege; or
 - (b) the court in the exercise of its general discretion excuses him from answering it.

^{F4}(6)

- (7) This section applies—
 - (a) in relation to proceedings on indictment for an offence, only if the person charged with the offence is arraigned on or after the commencement of this section;
 - (b) in relation to proceedings in a magistrates' court, only if the time when the court begins to receive evidence in the proceedings falls after the commencement of this section.

Textual Amendments

- F3** Words in s. 35(1) repealed (30.9.1998) by 1998 c. 37, ss. 35(a), 120(1)(2), Sch. 9 para. 2, **Sch. 10** (with Sch. 9); S.I. 1998/2327, **art. 2(1)(z)(aa)(3)(v)**
- F4** S. 35(6) repealed (30.9.1998) by 1998 c. 37, ss. 35(b), 120(1)(2), Sch. 9 para. 2, **Sch. 10** (with Sch. 9); S.I. 1998/2327, **art. 2(1)(z)(aa)(3)(v)**

Modifications etc. (not altering text)

- C3** Ss. 34-38 applied in part (with modifications) (1.2.1997) by S.I. 1997/16, **art. 2(1)(2)**, Sch. (as amended (26.9.2006) by S.I. 2006/2326, **art. 2(2)**)

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36 Effect of accused's failure or refusal to account for objects, substances or marks.

(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) 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, subsection (2) below applies.

(2) Where this subsection applies—

- [^{F5}(a) a magistrates' court inquiring into the offence as examining justices;]
- (b) a judge, in deciding whether to grant an application made by the accused under—
 - (i) section 6 of the ^{M3}Criminal Justice Act 1987 (application for dismissal of charge of serious fraud in respect of which notice of transfer has been given under section 4 of that Act); or
 - (ii) paragraph 5 of Schedule 6 to the ^{M4}Criminal Justice Act 1991 (application for dismissal of charge of violent or sexual offence involving child in respect of which notice of transfer has been given under section 53 of that Act);
- (c) the court, in determining whether there is a case to answer; and
- (d) the court or jury, in determining whether the accused is guilty of the offence charged,

may draw such inferences from the failure or refusal as appear proper.

- (3) Subsections (1) and (2) above apply to the condition of clothing or footwear as they apply to a substance or mark thereon.
- (4) Subsections (1) and (2) above do not apply unless the accused was told in ordinary language by the constable when making the request mentioned in subsection (1)(c) above what the effect of this section would be if he failed or refused to comply with the request.
- (5) This section applies in relation to officers of customs and excise as it applies in relation to constables.
- (6) This section does not preclude the drawing of any inference from a failure or refusal of the accused 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 section.

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

^{F6}(8)

Textual Amendments

F5 S. 36(2)(a) substituted (5.7.1996) by 1996 c. 25, s. 44(3)(7) (with s. 78(1))

F6 S. 36(8) repealed (5.7.1996) by 1996 c. 25, ss. 44(4)(7), 80, Sch. 5 Table 1, Note 2 (with s. 78(1))

Modifications etc. (not altering text)

C4 S. 36 applied (with modifications) (E.W.) (2.12.2002) by 2002 c. 30, s. 38, Sch. 4 Pt. 2 para. 21; S.I. 2002/2750, art. 2(a)(ii)(d)

C5 Ss. 34-38 applied (with modifications) (1.2.1997) by S.I. 1997/16, art. 2(1)(2), Sch.

C6 S. 36(1)(b)(c) modified (E.W.) (2.12.2002) by 2002 c. 30, s. 38, Sch. 4 Pt. 2 para. 23(b); S.I. 2002/2750, art. 2(a)(ii)(d)

C7 S. 36(1)(c) extended (E.W.) (2.12.2002) by 2002 c. 30, s. 38, Sch. 4 Pt. 2 para. 23(a); S.I. 2002/2750, art. 2(a)(ii)(d)

C8 S. 36(4) modified (E.W.) (2.12.2002) by 2002 c. 30, s. 38, Sch. 4 Pt. 2 para. 23(b); S.I. 2002/2750, art. 2(a)(ii)(d)

Marginal Citations

M3 1987 c. 38.

M4 1991 c. 53.

37 Effect of accused's failure or refusal to account for presence at a particular place.

(1) Where—

- (a) a person arrested by a constable was found by him at a place at or about the time the offence for which he was arrested is alleged to have been committed; and
- (b) that or another constable investigating the offence reasonably believes that the presence of the person at that place and at that time may be attributable to his participation in the commission of the offence; and
- (c) the constable informs the person that he so believes, and requests him to account for that presence; and
- (d) the person fails or refuses to do so,

then if, in any proceedings against the person for the offence, evidence of those matters is given, subsection (2) below applies.

(2) Where this subsection applies—

[^{F7}(a) a magistrates' court inquiring into the offence as examining justices;]

(b) a judge, in deciding whether to grant an application made by the accused under—

- (i) section 6 of the ^{M5}Criminal Justice Act 1987 (application for dismissal of charge of serious fraud in respect of which notice of transfer has been given under section 4 of that Act); or
- (ii) paragraph 5 of Schedule 6 to the ^{M6}Criminal Justice Act 1991 (application for dismissal of charge of violent or sexual offence)

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involving child in respect of which notice of transfer has been given under section 53 of that Act);

- (c) the court, in determining whether there is a case to answer; and
- (d) the court or jury, in determining whether the accused is guilty of the offence charged,

may draw such inferences from the failure or refusal as appear proper.

- (3) Subsections (1) and (2) do not apply unless the accused was told in ordinary language by the constable when making the request mentioned in subsection (1)(c) above what the effect of this section would be if he failed or refused to comply with the request.
- (4) This section applies in relation to officers of customs and excise as it applies in relation to constables.
- (5) This section does not preclude the drawing of any inference from a failure or refusal of the accused to account for his presence at a place which could properly be drawn apart from this section.
- (6) This section does not apply in relation to a failure or refusal which occurred before the commencement of this section.

^{F8}(7)

Textual Amendments

F7 S. 37(2)(a) substituted (5.7.1996) by 1996 c. 25, s. 44(3)(7) (with s. 78(1))

F8 S. 37(7) repealed (5.7.1996) by 1996 c. 25, ss. 44(4)(7), 80, Sch. 5 Table 1, Note 2 (with s. 78(1))

Modifications etc. (not altering text)

C9 Ss. 34-38 applied (with modifications) (1.2.1997) by S.I. 1997/16, art. 2(1)(2), Sch.

C10 S. 37(1)(b)(c) modified (E.W.) (2.12.2002) by 2002 c. 30, s. 38, Sch. 4 Pt. 2 para. 23(b); S.I. 2002/2750, art. 2(a)(ii)(d)

C11 S. 37(1)(c) extended (E.W.) (2.12.2002) by 2002 c. 30, s. 38, Sch. 4 Pt. 2 para. 23(a); S.I. 2002/2750, art. 2(a)(ii)(d)

C12 S. 37(3) modified (E.W.) (2.12.2002) by 2002 c. 30, s. 38, Sch. 4 Pt. 2 para. 23(b); S.I. 2002/2750, art. 2(a)(ii)(d)

Marginal Citations

M5 1987 c. 38.

M6 1991 c. 53.

38 Interpretation and savings for sections 34, 35, 36 and 37.

- (1) In sections 34, 35, 36 and 37 of this Act—

“legal representative” means an authorised advocate or authorised litigator, as defined by section 119(1) of the ^{M7}Courts and Legal Services Act 1990; and

“place” includes any building or part of a building, any vehicle, vessel, aircraft or hovercraft and any other place whatsoever.

- (2) In sections 34(2), 35(3), 36(2) and 37(2), references to an offence charged include references to any other offence of which the accused could lawfully be convicted on that charge.

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- (3) A person shall not have the proceedings against him transferred to the Crown Court for trial, have a case to answer or be convicted of an offence solely on an inference drawn from such a failure or refusal as is mentioned in section 34(2), 35(3), 36(2) or 37(2).
- (4) A judge shall not refuse to grant such an application as is mentioned in section 34(2)(b), 36(2)(b) and 37(2)(b) solely on an inference drawn from such a failure as is mentioned in section 34(2), 36(2) or 37(2).
- (5) Nothing in sections 34, 35, 36 or 37 prejudices the operation of a provision of any enactment which provides (in whatever words) that any answer or evidence given by a person in specified circumstances shall not be admissible in evidence against him or some other person in any proceedings or class of proceedings (however described, and whether civil or criminal).

In this subsection, the reference to giving evidence is a reference to giving evidence in any manner, whether by furnishing information, making discovery, producing documents or otherwise.

- (6) Nothing in sections 34, 35, 36 or 37 prejudices any power of a court, in any proceedings, to exclude evidence (whether by preventing questions being put or otherwise) at its discretion.

Modifications etc. (not altering text)

C13 Ss. 34-38 applied (with modifications) (1.2.1997) by S.I. 1997/16, art. 2(1)(2), Sch.

Marginal Citations

M7 1990 c. 41.

39 Power to apply sections 34 to 38 to armed forces.

- (1) The Secretary of State may by order direct that any provision of sections 34 to 38 of this Act shall apply, subject to such modifications as he may specify, to any proceedings to which this section applies.
- (2) This section applies—
 - (a) to proceedings whereby a charge is dealt with summarily under Part II of the ^{M8}Army Act 1955;
 - (b) to proceedings whereby a charge is dealt with summarily under Part II of the ^{M9}Air Force Act 1955;
 - (c) to proceedings whereby a charge is summarily tried under Part II of the ^{M10}Naval Discipline Act 1957;
 - (d) to proceedings before a court martial constituted under the Army Act 1955;
 - (e) to proceedings before a court martial constituted under the Air Force Act 1955;
 - (f) to proceedings before a court martial constituted under the Naval Discipline Act 1957;
 - (g) to proceedings before a disciplinary court constituted under [^{F9}section 52G] of the Naval Discipline Act 1957;
 - (h) to proceedings before the Courts-Martial Appeal Court;
 - (i) to proceedings before a Standing Civilian Court;

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and it applies wherever the proceedings take place.

- (3) An order under this section shall be made by statutory instrument and shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Textual Amendments

F9 Words in s. 39(2)(g) substituted (1.4.1997) by 1996 c. 46, s. 5, **Sch. 1**, Pt. IV para. 111; S.I. 1997/304, **art. 2** (with savings in art. 3)

Marginal Citations

M8 1955 c. 18.

M9 1955 c. 19.

M10 1957 c. 53.

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