



Criminal Justice and Public Order Act 1994

1994 CHAPTER 33

PART III

COURSE OF JUSTICE: EVIDENCE, PROCEDURE, ETC.

Inferences from accused's silence

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 [^{F1}a person who, for the purposes of the Legal Services Act 2007, is an authorised person in relation to an activity which constitutes the exercise of a right of audience or the conduct of litigation (within the meaning of that Act); 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.

[^{F2}(2A) In each of sections 34(2A), 36(4A) and 37(3A) “ authorised place of detention ” means

- (a) a police station; or
- (b) any other place prescribed for the purposes of that provision by order made by the Secretary of State;

and the power to make an order under this subsection shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.]

Changes to legislation: *Criminal Justice and Public Order Act 1994, Section 38 is up to date with all changes known to be in force on or before 11 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*

- (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.

Textual Amendments

- F1** Words in s. 38 substituted (1.1.2010) by [Legal Services Act 2007 \(c. 29\), s. 211\(2\), Sch. 21 para. 116](#) (with [ss. 29, 192, 193](#)); [S.I. 2009/3250, art. 2\(h\)](#)
- F2** S. 38(2A) inserted (27.9.1999 for specified purposes and otherwise 1.4.2003) by [1999 c. 23, ss. 58\(5\), 68\(3\)\(4\)](#) (with [Sch. 7 paras. 5\(2\), 8](#)); [S.I. 2003/707, art. 2\(a\)](#)

Modifications etc. (not altering text)

- C1** Ss. 34-38 applied (with modifications) (1.2.1997) by [S.I. 1997/16, art. 2\(1\)\(2\), Sch.](#)
- C2** S. 38 applied in part (with modifications) (26.9.2006) by [The Criminal Justice and Public Order Act 1994 \(Application to the Armed Forces\) Order 2006 \(S.I. 2006/2326\), art. 3\(1\), Sch. 1](#)
- C3** Ss. 34-38 applied (with modifications) (19.6.2023) by [The Service Police \(Complaints etc.\) Regulations 2023 \(S.I. 2023/624\), reg. 1\(1\), Sch. 1 para. 2](#)
- C4** S. 38(1) applied (with modifications) (31.10.2009) by [Criminal Justice and Public Order Act 1994 \(Application To The Armed Forces\) Order 2009 \(S.I. 2009/990\), arts. 1\(1\), 2, Sch. 1](#) (with arts. 4, 5)
- C5** S. 38(2) applied (with modifications) (31.10.2009) by [Criminal Justice and Public Order Act 1994 \(Application To The Armed Forces\) Order 2009 \(S.I. 2009/990\), arts. 1\(1\), 2, Sch. 1](#) (with art. 4)
- C6** S. 38(2A) applied (with modifications) (31.10.2009) by [Criminal Justice and Public Order Act 1994 \(Application To The Armed Forces\) Order 2009 \(S.I. 2009/990\), arts. 1\(1\), 2, Sch. 1](#) (with art. 4)
- C7** S. 38(3) applied (with modifications) (31.10.2009) by [Criminal Justice and Public Order Act 1994 \(Application To The Armed Forces\) Order 2009 \(S.I. 2009/990\), arts. 1\(1\), 2, Sch. 1](#) (with art. 4)
- C8** S. 38(5)(6) applied (with modifications) (31.10.2009) by [Criminal Justice and Public Order Act 1994 \(Application To The Armed Forces\) Order 2009 \(S.I. 2009/990\), arts. 1\(1\), 2, Sch. 1](#) (with art. 4)

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

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

- s. 51(10)(a)(ia) inserted by [2003 c. 44 Sch. 36 para. 11\(3\)](#)