



# 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—
- (a) a magistrates' court, in deciding whether to grant an application for dismissal made by the accused under section 6 of the Magistrates' Courts Act 1980 (application for dismissal of charge in course of proceedings with a view to transfer for trial);
  - (b) a judge, in deciding whether to grant an application made by the accused under—

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*Status: This is the original version (as it was originally enacted).*

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- (i) section 6 of the 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 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 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.
- (7) In relation to any time before the commencement of section 44 of this Act, this section shall have effect as if the reference in subsection (2)(a) to the grant of an application for dismissal was a reference to the committal of the accused for trial.