



# Criminal Justice and Public Order Act 1994

## 1994 CHAPTER 33

### PART III

#### COURSE OF JUSTICE: EVIDENCE, PROCEDURE, ETC.

##### *Inferences from accused's silence*

#### **35 Effect of accused's silence at trial.**

- (1) At the trial of any person <sup>F1</sup>. . . for an offence, subsections (2) and (3) below apply unless—
- (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 [<sup>F2</sup>with a jury] , 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

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*Changes to legislation: Criminal Justice and Public Order Act 1994, Section 35 is up to date with all changes known to be in force on or before 29 July 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)*

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.

<sup>F3</sup>(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

- F1** 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)**
- F2** Words in s. 35(2) inserted (24.7.2006 for E.W. and 8.1.2007 for N.I., otherwise prosp.) by **Criminal Justice Act 2003** (c. 44), ss. 331, 336, **Sch. 36 para. 63**; S.I. 2006/1835, **art. 2(h)** (subject to art. 3); S.I. 2006/3422, **art. 2(c)(i)**
- F3** 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)

- C1** 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)**)
- C2** 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**
- C3** S. 35(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 art. 4)
- C4** S. 35(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)
- C5** S. 35(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)
- C6** S. 35(4)(5) 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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