



# 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,  
[<sup>F1</sup>; or
  - (c) at any time after being charged with the offence, on being questioned under section 22 of the Counter-Terrorism Act 2008 (post-charge questioning), 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—
- <sup>F2</sup>(a) .....
  - <sup>F3</sup>(b) a judge, in deciding whether to grant an application made by the accused under [<sup>F4</sup>paragraph 2 of Schedule 3 to the Crime and Disorder Act 1998]
  - (c) the court, in determining whether there is a case to answer;

*Status: Point in time view as at 05/11/2012. This version of this provision has been superseded.*

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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.

[<sup>F5</sup>(2A) Where the accused was at an authorised place of detention at the time of the failure, subsections (1) and (2) above do not apply if he had not been allowed an opportunity to consult a solicitor prior to being questioned, charged or informed as mentioned in subsection (1) above.]

(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.

<sup>F6</sup>(7) .....

#### Textual Amendments

- F1** S. 34(1)(c) and word inserted (10.7.2012) by [Counter-Terrorism Act 2008 \(c. 28\)](#), **ss. 22(9)**, 100(5) (with [s. 22\(8\)\(10\)101\(2\)](#)); [S.I. 2012/1724](#), art. 2(a)
- F2** S. 34(2)(a) repealed (18.6.2012 for specified purposes, 5.11.2012 for specified purposes, 28.5.2013 for specified purposes) by [Criminal Justice Act 2003 \(c. 44\)](#), s. 336(3)(4), **Sch. 3 para. 64(2)(a)**, **Sch. 37 Pt. 4**; [S.I. 2012/1320](#), art. 4(1)(c)(d)(2)(3) (with art. 5) (see [S.I. 2012/2574](#), arts. 4(2), 2, Schedule and [S.I. 2013/1103](#), art. 4)
- F3** Words in s. 34(2)(b) substituted for s. 34(2)(b)(i)(ii) (9.5.2005 for specified purposes, 18.6.2012 for specified purposes, 5.11.2012 for specified purposes, 28.5.2013 for specified purposes) by [Criminal Justice Act 2003 \(c. 44\)](#), s. 336(3)(4), **Sch. 3 para. 64(2)(b)**; [S.I. 2005/1267](#), art. 2(1)(2)(a), **Sch. Pt. 1**; [S.I. 2012/1320](#), art. 4(1)(c)(2)(3) (with art. 5) (see [S.I. 2012/2574](#), arts. 4(2), 2, Schedule and [S.I. 2013/1103](#), art. 4)
- F4** S. 34(2)(b): words substituted for s. 34(2)(b)(i)(ii) (9.5.2005 for specified purposes, otherwise prosp.) by [Criminal Justice Act 2003 \(44\)](#), 41, 336, {**Sch. 3 para. 64(2)(b)**}; [S.I. 2005/1267](#), **art. 2(2)**, **Sch. para. 1(1)(p)**
- F5** S. 34(2A) inserted (1.4.2003) by [1999 c. 23](#), **ss. 58(2)**, 68(3) (with **Sch. 7 paras. 5(2)**, 8); [S.I. 2003/707](#), **art. 2(a)**
- F6** 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))

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**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. 89(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.**
- C3** S. 34 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** Sch. 1
- C4** S. 34(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)
- C5** S. 34(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. 34(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. 34(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. 34(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)
- C9** S. 34(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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