

CRIMINAL JUSTICE AND PUBLIC ORDER ACT 1994

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 ... the court or jury, in determining whether the accused is guilty of the offence charged, may draw such inferences from the failures as appear proper.

35. Effect of accused's silence at trial

(1) At the trial of any person who has attained the age of fourteen years 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, 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.

(6) Where the age of any person is material for the purposes of subsection (1) above, his age shall for those purposes be taken to be that which appears to the court to be his age.

(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.

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 –
 - ...
 - (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.

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 –
 - ...
 - (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.