



# Criminal Justice and Public Order Act 1994

## 1994 CHAPTER 33

### PART III

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

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

### **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—

<sup>F1</sup>(a) .....

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- <sup>F2</sup>(b) a judge, in deciding whether to grant an application made by the accused under<sup>F3</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; and
- (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.

- (3) Subsections (1) and (2) above apply to the condition of clothing or footwear as they apply to a substance or mark thereon.

- (4) Subsections (1) and (2) above do not apply unless the accused was told in ordinary language by the constable when making the request mentioned in subsection (1)(c) above what the effect of this section would be if he failed or refused to comply with the request.

<sup>F4</sup>( 4A ) Where the accused was at an authorised place of detention at the time of the failure or refusal, subsections (1) and (2) above do not apply if he had not been allowed an opportunity to consult a solicitor prior to the request being made.]

- (5) This section applies in relation to officers of customs and excise as it applies in relation to constables.

- (6) This section does not preclude the drawing of any inference from a failure or refusal of the accused to account for the presence of an object, substance or mark or from the condition of clothing or footwear which could properly be drawn apart from this section.

- (7) This section does not apply in relation to a failure or refusal which occurred before the commencement of this section.

<sup>F5</sup>(8) .....

#### Textual Amendments

- F1** S. 36(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\(3\)\(a\)](#), [Sch. 37 Pt. 4](#); [S.I. 2012/1320](#), art. 4(1)(c)(d)(2)(3) (with art. 5) (see [S.I. 2012/2574](#), art. 4(2) and [S.I. 2013/1103](#), art. 4); [S.I. 2012/2574](#), art. 2(2)(3)(c)(d), [Sch.](#) (with arts. 34) (as amended (4.11.2012) by [S.I. 2012/2761](#), art. 2) (with [S.I. 2013/1103](#), art. 4); [S.I. 2013/1103](#), art. 2(1)(c)(d)(2)(3) (with arts. 34)
- F2** Words in s. 36(2)(b) substituted for s. 36(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\(3\)\(b\)](#); [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](#), art. 4(2) and [S.I. 2013/1103](#), art. 4); [S.I. 2012/2574](#), art. 2(2)(3)(c), [Sch.](#) (with arts. 34) (as amended (4.11.2012) by [S.I. 2012/2761](#), art. 2) (with [S.I. 2013/1103](#), art. 4); [S.I. 2013/1103](#), art. 2(1)(c)(2)(3) (with arts. 34)
- F3** S. 36(2)(b): words substituted for s. 36(2)(b)(i)(ii) (9.5.2005 for specified purposes, otherwise prosp.) by [Criminal Justice Act 2003 \(44\)](#), 41, 336, {[Sch. 3 para. 64\(3\)\(b\)](#)}; [S.I. 2005/1267](#), [art. 2\(2\)](#), [Sch. para. 1\(1\)\(p\)](#)
- F4** S. 36(4A) inserted (1.4.2003) by [1999 c. 23](#), ss. 58(3), 68(3) (with [Sch. 7 paras. 5\(2\), 8](#)); [S.I. 2003/707](#), [art. 2\(a\)](#)
- F5** S. 36(8) 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. 36 applied (with modifications) (E.W.) (2.12.2002) by 2002 c. 30, s. 38, **Sch. 4 Pt. 2 para. 21**; S.I. 2002/2750, **art. 2(a)(ii)(d)**
- C2** Ss. 34-38 applied (with modifications) (1.2.1997) by S.I. 1997/16, art. 2(1)(2), **Sch.**
- 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. 36(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. 36(1)(b)(c) modified (E.W.) (2.12.2002) by 2002 c. 30, s. 38, **Sch. 4 Pt. 2 para. 23(b)**; S.I. 2002/2750, **art. 2(a)(ii)(d)**
- C6** S. 36(1)(c) extended (E.W.) (2.12.2002) by 2002 c. 30, s. 38, **Sch. 4 Pt. 2 para. 23(a)**; S.I. 2002/2750, **art. 2(a)(ii)(d)**
- C7** S. 36(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)
- C8** S. 36(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)
- C9** S. 36(4) modified (E.W.) (2.12.2002) by 2002 c. 30, s. 38, **Sch. 4 Pt. 2 para. 23(b)**; S.I. 2002/2750, **art. 2(a)(ii)(d)**
- C10** S. 36(4) 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)
- C11** S. 36(4A) 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)
- C12** S. 36(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)
- C13** S. 36(7) 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)

**Changes to legislation:**

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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\(3\)](#)