Changes to legislation: *The Criminal Evidence (Northern Ireland) Order 1988 is up to date with all changes known to be in force on or before 13 July 2019. 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) View outstanding changes*

STATUTORY INSTRUMENTS

1988 No. 1987 (N.I. 20)

The Criminal Evidence (Northern Ireland) Order 1988

- - - - - - *14th November 1988*

Title and commencement

1.—(1) This Order may be cited as the Criminal Evidence (Northern Ireland) Order 1988.

(2) Articles 2 and 4 shall come into operation on the seventh day after the day on which this Order is made and the other provisions of this Order shall come into operation on the expiration of one month from the day on which it is made.

Interpretation and savings

2.—(1) The Interpretation Act (Northern Ireland) 1954[F1] shall apply to Article 1 and the following provisions of this Order as it applies to a Measure of the Northern Ireland Assembly.

(2) In this Order—

[[F2]"authorised place of detention" means—

(a) a police station; or

(b) any other place prescribed for the purposes of this Order by order made by the Secretary of State;

and an order made under this paragraph shall be subject to **[**[F3]negative resolution**].]**

"child" means a person under the age of fourteen;

"place" includes any building or part of a building, any vehicle, vessel, aircraft or hovercraft and any other place whatsoever;

"statutory provision" has the meaning assigned by section 1(f) of the Interpretation Act (Northern Ireland) 1954.

(3) In Articles 3(2), 4(4), 5(2) and 6(2), references to an offence charged include references to any other offence of which the accused could lawfully be convicted on that charge.

(4) A person shall not be committed for trial, have a case to answer or be convicted of an offence solely on an inference drawn from such a failure or refusal as is mentioned in Article 3(2), 4(4), 5(2) or 6(2).

(5) A judge shall not refuse to grant such an application as is mentioned in Article 3(2)(b) solely on an inference drawn from such a failure as is mentioned in Article 3(2).

(6) Nothing in this Order prejudices the operation of any statutory provision which provides (in whatever words) that any answer or evidence given by a person in specified circumstances shall not be admissible in evidence against him or some other person in any proceedings or class of proceedings (however described, and whether civil or criminal).

In this paragraph the reference to giving evidence is a reference to giving evidence in any manner, whether by furnishing information, making discovery, producing documents or otherwise.

(7) Nothing in this Order prejudices any power of a court, in any proceedings, to exclude evidence (whether by preventing questions from being put or otherwise) at its discretion.

F1 1954 c. 33 (NI)

F2 Art. 2(2): definition of "authorised place of detention" inserted (1.3.2007) by Criminal Evidence (Northern Ireland) Order 1999 (S.I. 1999/2789 (N.I. 8)), arts. 1(2), 36(2); S.R. 2007/176, **art. 2**

F3 Words in art. 2(2) in the definition of "authorised place of detention" substituted (12.4.2010) by Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), arts. 1(2), 4(3), **Sch. 2 para. 12(2)** (with arts. 28-31); S.I. 2010/977, **art. 1(2)**

Modifications etc. (not altering text)

C1 Art. 2(2): definition of "authorised place of detention" functions transferred from Secretary of State to Department of Justice (12.4.2010) by Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), arts. 1(2), 4(1)(2), **Sch. 1** (with arts. 28-31); S.I. 2010/977, **art. 1(2)**

Circumstances in which inferences may be drawn from accused's failure to mention particular facts when questioned, charged, etc.

3.—(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**[**F4 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, paragraph (2) applies.

(2) Where this paragraph applies—

(a) the court, in determining whether to commit the accused for trial or whether there is a case to answer;

(b) a judge, in deciding whether to grant an application made by the accused under

[F5(i)**]** Article 5 of the Criminal Justice (Serious Fraud) (Northern Ireland) Order 1988F6 (application for dismissal of charge where a case of fraud has been transferred from a magistrates' court to the Crown Court under Article 3 of that Order);**[**F7 or**]**

[F7(ii) paragraph 4 of Schedule 1 to the Children's Evidence (Northern Ireland) Order 1995 (application for dismissal of charge of violent or sexual offence involving child in respect of which notice of transfer has been given under Article 4 of that Order); and**]**

(c) the court or jury, in determining whether the accused is guilty of the offence charged,

may—

(i) draw such inferences from the failure as appear proper;

Head (ii) rep. by 1996 NI 24

[F8(2A) Where the accused was at an authorised place of detention at the time of the failure, paragraphs (1) and (2) 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 paragraph (1).**]**

(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 Article 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 paragraph (1) "officially informed" means informed by a constable or any such person.

(5) This Article 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 Article; or

(b) preclude the drawing of any inference from any such silence or other reaction of the accused which could be drawn apart from this Article.

(6) This Article does not apply in relation to a failure to mention a fact if the failure occurred before the commencement of this Article.

F4 1994 c. 33
F5 1995 NI 3
F6 1988 NI 16
F7 1995 NI 3
F8 Art. 3(2A) inserted (1.3.2007) by Criminal Evidence (Northern Ireland) Order 1999 (S.I. 1999/2789 (N.I. 8)), arts. 1(2), 36(3); S.R. 2007/176, **art. 2**

Accused to be called upon to give evidence at trial

4.—(1) At the trial of any person (other than a child) for an offence paragraphs (2)**[**F9 and (4)**]** 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**[**F10. . . give evidence;

but paragraph (2) does not apply**[**F11 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**]**.

[F12(2) Where this paragraph applies, the court shall, at the conclusion of the evidence for the prosecution, satisfy itself (in the case of proceedings on indictment conducted 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.**]**

(4) **[**F13Where this paragraph applies,**]** the court or jury, in determining whether the accused is guilty of the offence charged, may—

(a) draw such inferences**[**F14 as appear proper from the failure of the accused to give evidence or his refusal, without good cause, to answer any question**]**;