

**PRACTICE DIRECTION: CROWN COURT****CRIMINAL EVIDENCE (NORTHERN IRELAND) ORDER 1988, ARTICLE 4**

1. At the conclusion of the evidence for the prosecution, Article 4(2) of the Criminal Evidence (Northern Ireland) Order 1988 (as amended with effect from 10th April 1995 by paragraph 61(3)(b) of Schedule 10 to the Criminal Justice and Public Order Act 1994) requires the court to satisfy itself 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.

**2. IF THE ACCUSED IS LEGALLY REPRESENTED****(a) Where there is one accused**

- (i) Article 4(1) of the 1988 Order provides that Article 4(2) does not apply if, at the conclusion of the evidence for the prosecution, the accused's legal representative informs the court that the accused will give evidence. In the case of proceedings on indictment conducted with a jury this should be done in the presence of the jury. If counsel indicates that the accused will give evidence, the case should proceed in the usual way.
- (ii) If the court is not so informed, or if the court is informed that the accused does not intend to give evidence, the judge should (in the presence of the jury

in the case of proceedings on indictment tried with a jury) enquire of counsel in these terms:

"Have you advised your client that the stage has now been reached at which he may give evidence and, if he chooses not to do so or, having been sworn, without good cause refuses to answer any question, the (court) (jury) may draw such inferences as appear proper from his failure to do so?"

(iii) If counsel replies to the judge that the accused has been so advised, then the case shall proceed. If counsel replies that the accused has not been so advised, then the judge shall direct counsel to advise his client of the matters set out in paragraph 2(a)(ii) hereof and should adjourn briefly for this purpose before proceeding further.

(b) **Where there are more than one accused**

(i) At the conclusion of the evidence for the prosecution, the judge should address counsel in the following terms:

"The stage has now been reached at which your clients may give evidence, and if any of them chooses not to do so or, having been sworn, without good cause refuses to answer any question, the (court) (jury) may draw such inferences as appear proper from his failure to do so. When the time comes for each accused to present his case, I shall ask counsel for each if his client intends to give evidence, and if not whether he has been advised about the inferences which may be drawn if he chooses not to do so."

(ii) The judge should then proceed to ask counsel for the accused named first on the indictment whether that accused intends to give evidence, and if not whether he has been so advised about the inferences which may be drawn

from his failure to do so. The judge should repeat this inquiry at the time when the case for the second and each subsequent accused is ready to commence.

3. **IF THE ACCUSED IS NOT LEGALLY REPRESENTED**

(a) **Where there is one accused**

If the accused is not legally represented the judge should at the conclusion of the evidence for the prosecution (and, in the case of proceedings on indictment tried with a jury, in the presence of the jury) say to the accused:

"You have heard the evidence against you. Now is the time for you to make your defence. You may go into the witness box and give evidence on oath, and be cross-examined like any other witness. If you do not give evidence or, having been sworn, without good cause refuse to answer any question, the (court) (jury) may draw such inferences as appear proper. That means the (court) (jury) may take it into account against you.

You may also call any witness or witnesses whom you have arranged to attend court.

Afterwards you may also, if you wish, address the jury by arguing your case. But you cannot at that stage give evidence.

Do you now intend to give evidence?"

(b) **Where there are more than one accused**

(i) Where none of the accused are legally represented the judge should at the conclusion of the evidence for the prosecution (and, in the case of proceedings

on indictment tried with a jury, in the presence of the jury) address all of the accused in the following terms:

"You have heard the evidence against you. Now is the time for you to make your defences. Each of you in turn and in the order in which you are named on the indictment may go into the witness box and give evidence on oath, and be cross-examined like any other witness. If any of you do not give evidence or, having been sworn, without good cause refuse to answer any question, the (court) (jury) may draw such inferences as appear proper. That means the (court) (jury) may take it into account against you.

Each of you may also call any witness or witnesses whom you have arranged to attend court.

Afterwards you may also, if you wish, address the jury by arguing your case. But you cannot at that stage give evidence."

- (ii) The judge should then proceed to ask the accused named first on the indictment whether he intends to give evidence and if not whether he understands that certain inferences may be drawn from his failure to do so. At the conclusion of the case for each accused the judge should ask the same questions of the next accused named on the indictment and should repeat so much of the general address as he thinks advisable and appropriate.



Lord Chief Justice