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STATUTORY INSTRUMENTS

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**2004 No. 3346**

**CRIMINAL LAW, ENGLAND AND WALES**

**The Criminal Justice Act 2003  
(Categories of Offences) Order 2004**

*Made - - - - 15th December 2004*

*Coming into force - - 29th December 2004*

The Secretary of State, in exercise of the powers conferred upon him by section 103(4)(b) of the Criminal Justice Act 2003<sup>(1)</sup> hereby makes the following Order, a draft of which has been laid before and approved by a resolution of each House of Parliament:

1.—(1) This Order may be cited as the Criminal Justice Act 2003 (Categories of Offences) Order 2004 and shall come into force 14 days after the day on which it is made or on the day that sections 98 to 110 of the 2003 Act (Evidence of Bad Character) come into force, whichever is later.

(2) In this Order “the 2003 Act” means the Criminal Justice Act 2003.

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**Commencement Information**

**I1** Art. 1 in force at 29.12.2004, see [art. 1\(1\)](#)

2.—(1) The categories of offences set out in Parts 1 and 2 of the Schedule to this Order are hereby prescribed for the purposes of section 103(4)(b) of the 2003 Act.

(2) Two offences are of the same category as each other if they are included in the same Part of the Schedule.

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**Commencement Information**

**I2** Art. 2 in force at 29.12.2004, see [art. 1\(1\)](#)

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(1) 2003 c. 44.

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**Changes to legislation:** *There are outstanding changes not yet made by the legislation.gov.uk editorial team to The Criminal Justice Act 2003 (Categories of Offences) Order 2004. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) [View outstanding changes](#)*

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Home Office  
15th December 2004

*Scotland of Asthal Q.C.*  
Minister of State

## SCHEDULE

Article 2

### Prescribed Categories of Offences

## PART 1

### THEFT CATEGORY

1. An offence under section 1 of the Theft Act 1968<sup>(2)</sup> (theft).

#### Commencement Information

**I3** Sch. Pt. 1 para. 1 in force at 29.12.2004, see [art. 1\(1\)](#)

2. An offence under section 8 of that Act (robbery).

#### Commencement Information

**I4** Sch. Pt. 1 para. 2 in force at 29.12.2004, see [art. 1\(1\)](#)

3. An offence under section 9(1)(a) of that Act<sup>(3)</sup> (burglary) if it was committed with intent to commit an offence of stealing anything in the building or part of a building in question.

#### Commencement Information

**I5** Sch. Pt. 1 para. 3 in force at 29.12.2004, see [art. 1\(1\)](#)

4. An offence under section 9(1)(b) of that Act (burglary) if the offender stole or attempted to steal anything in the building or that part of it.

#### Commencement Information

**I6** Sch. Pt. 1 para. 4 in force at 29.12.2004, see [art. 1\(1\)](#)

5. An offence under section 10 of that Act (aggravated burglary) if the offender committed a burglary described in paragraph 3 or 4 of this Part of the Schedule.

#### Commencement Information

**I7** Sch. Pt. 1 para. 5 in force at 29.12.2004, see [art. 1\(1\)](#)

6. An offence under section 12 of that Act<sup>(4)</sup> (taking motor vehicle or other conveyance without authority).

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(2) 1968 c. 60.

(3) Section 9 was amended by sections 139 and 140 of and paragraph 17 of Schedule 6 and Schedule 7 to the Sexual Offences Act 2003 (c. 42); section 26(2) of the Criminal Justice Act 1991 (c. 53) and section 168(2) and paragraph 26 of Schedule 10 to the Criminal Justice and Public Order Act 1994 (c. 33).

(4) Section 12 was amended by section 37(1) of the Criminal Justice Act 1988 (c. 33); section 119(2) and Part I of Schedule 7 to the Police and Criminal Evidence Act 1984 (c. 60); section 37 of the Vehicles (Crime) Act 2001 (c. 3).

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**Commencement Information**

**I8** Sch. Pt. 1 para. 6 in force at 29.12.2004, see [art. 1\(1\)](#)

7. An offence under section 12A of that Act<sup>(5)</sup> (aggravated vehicle-taking).

**Commencement Information**

**I9** Sch. Pt. 1 para. 7 in force at 29.12.2004, see [art. 1\(1\)](#)

8. An offence under section 22 of that Act (handling stolen goods).

**Commencement Information**

**I10** Sch. Pt. 1 para. 8 in force at 29.12.2004, see [art. 1\(1\)](#)

9. An offence under section 25 of that Act (going equipped for stealing).

**Commencement Information**

**I11** Sch. Pt. 1 para. 9 in force at 29.12.2004, see [art. 1\(1\)](#)

10. An offence under section 3 of the Theft Act 1978<sup>(6)</sup> (making off without payment).

**Commencement Information**

**I12** Sch. Pt. 1 para. 10 in force at 29.12.2004, see [art. 1\(1\)](#)

11. An offence of—

- (a) aiding, abetting, counselling, procuring or inciting the commission of an offence specified in this Part of this Schedule; or
- (b) attempting to commit an offence so specified.

**Commencement Information**

**I13** Sch. Pt. 1 para. 11 in force at 29.12.2004, see [art. 1\(1\)](#)

## PART 2

### SEXUAL OFFENCES (PERSONS UNDER THE AGE OF 16) CATEGORY

1. An offence under section 1 of the Sexual Offences Act 1956<sup>(7)</sup> (rape) if it was committed in relation to a person under the age of 16.

<sup>(5)</sup> Section 12A was inserted by section 2(1) of the Aggravated Vehicle-Taking Act 1992 (c. 11) and was amended by section 285(1) of the Criminal Justice Act 2003 (c. 44).

<sup>(6)</sup> 1978 c. 31.

<sup>(7)</sup> 1956 c. 69; section 1 was substituted by section 142 of the Criminal Justice and Public Order Act 1994 (c. 33).

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**Commencement Information**

**I14** Sch. Pt. 2 para. 1 in force at 29.12.2004, see [art. 1\(1\)](#)

2. An offence under section 5 of the Sexual Offences Act 1956<sup>(8)</sup>(intercourse with a girl under thirteen).

**Commencement Information**

**I15** Sch. Pt. 2 para. 2 in force at 29.12.2004, see [art. 1\(1\)](#)

3. An offence under section 6 of that Act<sup>(9)</sup> (intercourse with a girl under sixteen).

**Commencement Information**

**I16** Sch. Pt. 2 para. 3 in force at 29.12.2004, see [art. 1\(1\)](#)

4. An offence under section 7 of that Act<sup>(10)</sup> (intercourse with a defective) if it was committed in relation to a person under the age of 16.

**Commencement Information**

**I17** Sch. Pt. 2 para. 4 in force at 29.12.2004, see [art. 1\(1\)](#)

5. An offence under section 10 of that Act (incest by a man) if it was committed in relation to a person under the age of 16.

**Commencement Information**

**I18** Sch. Pt. 2 para. 5 in force at 29.12.2004, see [art. 1\(1\)](#)

6. An offence under section 11 of that Act (incest by a woman) if it was committed in relation to a person under the age of 16.

**Commencement Information**

**I19** Sch. Pt. 2 para. 6 in force at 29.12.2004, see [art. 1\(1\)](#)

7. An offence under section 12 of that Act<sup>(11)</sup> (buggery) if it was committed in relation to a person under the age of 16.

<sup>(8)</sup> Sections 5 to 7 and 10 to 15 of the Sexual Offences Act 1956 (c. 69); section 54 of the Criminal Law Act 1977 (c. 45); section 1 of the Indecency with Children Act 1960 (c. 33); section 128 of the Mental Health Act 1959 (c. 72) and section 3 of the Sexual Offences (Amendment) Act 2000 (c. 44) were repealed by sections 139 and 140 of and paragraph 11(a) of Schedule 6 and Schedule 7 to the Sexual Offences Act 2003 (c. 42).

<sup>(9)</sup> Section 6 was amended by section 10(1) and paragraph 14 of Schedule 2 to the Criminal Law Act 1967 (c. 80).

<sup>(10)</sup> Section 7 was substituted by section 127(1)(a) of the Mental Health Act 1959 (c. 72).

<sup>(11)</sup> Section 12 was amended by section 143 of the Criminal Justice and Public Order Act 1994 (c. 33); sections 1 and 2 of the Sexual Offences (Amendment) Act 2000 (c. 44) and section 119 of and Part V of Schedule 6 to the Police and Criminal Evidence Act 1984 (c. 60).

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**Commencement Information**

**I20** Sch. Pt. 2 para. 7 in force at 29.12.2004, see [art. 1\(1\)](#)

**8.** An offence under section 13 of that Act(**12**) (indecenty between men) if it was committed in relation to a person under the age of 16.

**Commencement Information**

**I21** Sch. Pt. 2 para. 8 in force at 29.12.2004, see [art. 1\(1\)](#)

**9.** An offence under section 14 of that Act (indecent assault on a woman) if it was committed in relation to a person under the age of 16.

**Commencement Information**

**I22** Sch. Pt. 2 para. 9 in force at 29.12.2004, see [art. 1\(1\)](#)

**10.** An offence under section 15 of that Act (indecent assault on a man) if it was committed in relation to a person under the age of 16.

**Commencement Information**

**I23** Sch. Pt. 2 para. 10 in force at 29.12.2004, see [art. 1\(1\)](#)

**11.** An offence under section 128 of the Mental Health Act 1959(**13**) (sexual intercourse with patients) if it was committed in relation to a person under the age of 16.

**Commencement Information**

**I24** Sch. Pt. 2 para. 11 in force at 29.12.2004, see [art. 1\(1\)](#)

**12.** An offence under section 1 of the Indecency with Children Act 1960(**14**) (indecent conduct towards young child).

**Commencement Information**

**I25** Sch. para. 12 in force at 29.12.2004, see [art. 1\(1\)](#)

**13.** An offence under section 54 of the Criminal Law Act 1977(**15**) (inciting a girl under 16 to have incestuous sexual intercourse).

(12) Section 13 was amended by section 2(2) of the Sexual Offences (Amendment) Act 2000 (c. 44).  
(13) 1959 c. 72; section 128 was amended by section 129 of and paragraph 29 of Schedule 15 and Schedule 16 to the National Health Service Act 1977 (c. 49); section 148 of and paragraph 15 of Schedule 3 to the Mental Health Act 1983 (c. 20); and section 57 of and paragraph 2 of Schedule 1 to the Registered Homes Act 1984 (c. 23) and section 116 of and paragraph 2 of Schedule 4 to the Care Standards Act 2000 (c. 14).  
(14) 1960 c. 33; section 1 was amended by section 39 of the Criminal Justice and Court Services Act 2000 (c. 43) and section 52 of the Crime (Sentences) Act 1997 (c. 44).  
(15) 1977 (c. 45); section 54 was amended by section 119(2) and Schedule 7 to the Police and Criminal Evidence Act 1984 (c. 60).

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**Commencement Information**

**I26** Sch. para. 13 in force at 29.12.2004, see [art. 1\(1\)](#)

**14.** An offence under section 3 of the Sexual Offences (Amendment) Act 2000<sup>(16)</sup> (abuse of a position of trust) if it was committed in relation to a person under the age of 16.

**Commencement Information**

**I27** Sch. para. 14 in force at 29.12.2004, see [art. 1\(1\)](#)

**15.** An offence under section 1 of the Sexual Offences Act 2003<sup>(17)</sup> (rape) if it was committed in relation to a person under the age of 16.

**Commencement Information**

**I28** Sch. para. 15 in force at 29.12.2004, see [art. 1\(1\)](#)

**16.** An offence under section 2 of that Act (assault by penetration) if it was committed in relation to a person under the age of 16.

**Commencement Information**

**I29** Sch. para. 16 in force at 29.12.2004, see [art. 1\(1\)](#)

**17.** An offence under section 3 of that Act (sexual assault) if it was committed in relation to a person under the age of 16.

**Commencement Information**

**I30** Sch. para. 17 in force at 29.12.2004, see [art. 1\(1\)](#)

**18.** An offence under section 4 of that Act (causing a person to engage in sexual activity without consent) if it was committed in relation to a person under the age of 16.

**Commencement Information**

**I31** Sch. para. 18 in force at 29.12.2004, see [art. 1\(1\)](#)

**19.** An offence under section 5 of the Sexual Offences Act 2003 (rape of a child under 13).

**Commencement Information**

**I32** Sch. para. 19 in force at 29.12.2004, see [art. 1\(1\)](#)

**20.** An offence under section 6 of that Act (assault of a child under 13 by penetration).

<sup>(16)</sup> 2000 c. 44.

<sup>(17)</sup> 2003 c. 42.

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**Commencement Information**

**I33** Sch. para. 20 in force at 29.12.2004, see [art. 1\(1\)](#)

**21.** An offence under section 7 of that Act (sexual assault of a child under 13).

**Commencement Information**

**I34** Sch. para. 21 in force at 29.12.2004, see [art. 1\(1\)](#)

**22.** An offence under section 8 of that Act (causing or inciting a child under 13 to engage in sexual activity).

**Commencement Information**

**I35** Sch. para. 22 in force at 29.12.2004, see [art. 1\(1\)](#)

**23.** An offence under section 9 of that Act (sexual activity with a child).

**Commencement Information**

**I36** Sch. para. 23 in force at 29.12.2004, see [art. 1\(1\)](#)

**24.** An offence under section 10 of that Act (causing or inciting a child to engage in sexual activity).

**Commencement Information**

**I37** Sch. para. 24 in force at 29.12.2004, see [art. 1\(1\)](#)

**25.** An offence under section 14 of that Act if doing it will involve the commission of an offence under sections 9 and 10 of that Act (arranging or facilitating the commission of a child sex offence).

**Commencement Information**

**I38** Sch. para. 25 in force at 29.12.2004, see [art. 1\(1\)](#)

**26.** An offence under section 16 of that Act (abuse of position of trust: sexual activity with a child) if it was committed in relation to a person under the age of 16.

**Commencement Information**

**I39** Sch. para. 26 in force at 29.12.2004, see [art. 1\(1\)](#)

**27.** An offence under section 17 of that Act (abuse of position of trust: causing or inciting a child to engage in sexual activity) if it was committed in relation to a person under the age of 16.



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**Commencement Information**

**I40** Sch. para. 27 in force at 29.12.2004, see [art. 1\(1\)](#)

**28.** An offence under section 25 of that Act (sexual activity with a child family member) if it was committed in relation to a person under the age of 16.

**Commencement Information**

**I41** Sch. para. 28 in force at 29.12.2004, see [art. 1\(1\)](#)

**29.** An offence under section 26 of that Act (inciting a child family member to engage in sexual activity) if it was committed in relation to a person under the age of 16.

**Commencement Information**

**I42** Sch. para. 29 in force at 29.12.2004, see [art. 1\(1\)](#)

**30.** An offence under section 30 of that Act (sexual activity with a person with a mental disorder impeding choice) if it was committed in relation to a person under the age of 16.

**Commencement Information**

**I43** Sch. para. 30 in force at 29.12.2004, see [art. 1\(1\)](#)

**31.** An offence under section 31 of that Act (causing or inciting a person with a mental disorder impeding choice to engage in sexual activity) if it was committed in relation to a person under the age of 16.

**Commencement Information**

**I44** Sch. para. 31 in force at 29.12.2004, see [art. 1\(1\)](#)

**32.** An offence under section 34 of that Act (inducement, threat, or deception to procure activity with a person with a mental disorder) if it was committed in relation to a person under the age of 16.

**Commencement Information**

**I45** Sch. para. 32 in force at 29.12.2004, see [art. 1\(1\)](#)

**33.** An offence under section 35 of that Act (causing a person with a mental disorder to engage in or agree to engage in sexual activity by inducement, threat or deception) if it was committed in relation to a person under the age of 16.

**Commencement Information**

**I46** Sch. para. 33 in force at 29.12.2004, see [art. 1\(1\)](#)

**34.** An offence under section 38 of that Act (care workers: sexual activity with a person with a mental disorder) if it was committed in relation to a person under the age of 16.

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**Commencement Information**

**I47** Sch. para. 34 in force at 29.12.2004, see [art. 1\(1\)](#)

**35.** An offence under section 39 of that Act (care workers: causing or inciting sexual activity) if it was committed in relation to a person under the age of 16.

**Commencement Information**

**I48** Sch. para. 35 in force at 29.12.2004, see [art. 1\(1\)](#)

**36.** An offence of—

- (a) aiding, abetting, counselling, procuring or inciting the commission of an offence specified in this Part of this Schedule; or
- (b) attempting to commit an offence so specified.

**Commencement Information**

**I49** Sch. para. 36 in force at 29.12.2004, see [art. 1\(1\)](#)

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**EXPLANATORY NOTE**

*(This note is not part of the Order)*

Section 103(2)(b) of the Criminal Justice Act 2003 provides that a defendant’s propensity to commit offences of the kind with which he is charged may (without prejudice to any other way of doing so) be established by evidence that he has been convicted of an offence of the same category as the one with which he is charged. Section 103(4)(b) provides that two offences are of the same category as each other if they belong to the same category of offences prescribed for the purposes of that section by an order made by the Secretary of State.

The categories prescribed by this Order are theft and sexual offences (persons under the age of 16). Each category consists of offences of the same type.

**Changes to legislation:**

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**Changes and effects yet to be applied to the whole Instrument associated Parts and Chapters:**

Whole provisions yet to be inserted into this Instrument (including any effects on those provisions):

- Sch. Pt. 2 para. 25 words substituted by [S.I. 2023/250 reg. 3](#)