



# Offences (Aggravation by Prejudice) (Scotland) Act 2009

2009 asp 8

**The Bill for this Act of the Scottish Parliament was passed by the Parliament on 3rd June 2009 and received Royal Assent on 8th July 2009**

An Act of the Scottish Parliament to make provision about the aggravation of offences by prejudice relating to disability or to sexual orientation or transgender identity.

## **1      Prejudice relating to disability**

- (1) This subsection applies where it is—
  - (a) libelled in an indictment, or specified in a complaint, that an offence is aggravated by prejudice relating to disability, and
  - (b) proved that the offence is so aggravated.
- (2) An offence is aggravated by prejudice relating to disability if—
  - (a) at the time of committing the offence or immediately before or after doing so, the offender evinces towards the victim (if any) of the offence malice and ill-will relating to a disability (or presumed disability) of the victim, or
  - (b) the offence is motivated (wholly or partly) by malice and ill-will towards persons who have a disability or a particular disability.
- (3) It is immaterial whether or not the offender's malice and ill-will is also based (to any extent) on any other factor.
- (4) Evidence from a single source is sufficient to prove that an offence is aggravated by prejudice relating to disability.
- (5) Where subsection (1) applies, the court must—
  - (a) state on conviction that the offence is aggravated by prejudice relating to disability,
  - (b) record the conviction in a way that shows that the offence is so aggravated,
  - (c) take the aggravation into account in determining the appropriate sentence, and
  - (d) state—
    - (i) where the sentence in respect of the offence is different from that which the court would have imposed if the offence were not so aggravated, the extent of and the reasons for that difference, or

*Changes to legislation: Offences (Aggravation by Prejudice) (Scotland) Act 2009 is up to date with all changes known to be in force on or before 04 June 2021. 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*

- (ii) otherwise, the reasons for there being no such difference.
- (6) In subsection (2)(a), “presumed” means presumed by the offender.
- (7) In this section, reference to disability is reference to physical or mental impairment of any kind.
- (8) For the purpose of subsection (7) (but without prejudice to its generality), a medical condition which has (or may have) a substantial or long-term effect, or is of a progressive nature, is to be regarded as amounting to an impairment.

#### Commencement Information

**II** [S. 1](#) in force at 24.3.2010 by [S.S.I. 2010/115](#), [art. 2](#)

## 2 Prejudice relating to sexual orientation or transgender identity

- (1) This subsection applies where it is—
  - (a) libelled in an indictment, or specified in a complaint, that an offence is aggravated by prejudice relating to sexual orientation or transgender identity, and
  - (b) proved that the offence is so aggravated.
- (2) An offence is aggravated by prejudice relating to sexual orientation or transgender identity if—
  - (a) at the time of committing the offence or immediately before or after doing so, the offender evinces towards the victim (if any) of the offence malice and ill-will relating to—
    - (i) the sexual orientation (or presumed sexual orientation) of the victim, or
    - (ii) the transgender identity (or presumed transgender identity) of the victim, or
  - (b) the offence is motivated (wholly or partly) by malice and ill-will towards persons who have—
    - (i) a particular sexual orientation, or
    - (ii) a transgender identity or a particular transgender identity.
- (3) It is immaterial whether or not the offender's malice and ill-will is also based (to any extent) on any other factor.
- (4) Evidence from a single source is sufficient to prove that an offence is aggravated by prejudice relating to sexual orientation or transgender identity.
- (5) Where subsection (1) applies, the court must—
  - (a) state on conviction that the offence is aggravated by prejudice relating to sexual orientation or transgender identity,
  - (b) record the conviction in a way that shows that the offence is so aggravated,
  - (c) take the aggravation into account in determining the appropriate sentence, and
  - (d) state—
    - (i) where the sentence in respect of the offence is different from that which the court would have imposed if the offence were not so aggravated, the extent of and the reasons for that difference, or