

CRIMINAL JUSTICE (SCOTLAND) ACT 2003

EXPLANATORY NOTES

THE ACT THE ACT IS IN 12 PARTS.

Part 12 – Miscellaneous and General

Miscellaneous

Section 74 – Offences aggravated by religious prejudice

410. **Section 74** makes provision to deal with offences that are aggravated by religious prejudice. At present, at common law the courts can take account of aggravations when sentencing. This provision requires them to do so and sets out the procedure that is to be followed by the Crown. For the provisions in the Bill to apply, the aggravation will require to be libelled in the indictment or specified in a complaint by the Crown and proved. "Religious prejudice" includes sectarian prejudice.
411. An offence is aggravated by religious prejudice not just on the basis of actual religious belief but on the accused's perception of the religious, social, or cultural affiliation of the individual or group targeted by the offender. The section requires a court to consider whether any element of religious prejudice is involved in an offence and if it finds that the offence has been aggravated by religious prejudice to take that factor into account when sentencing. The court is also required to state the extent of and reasons for any difference in the sentence from that which would have been given had the offence not been aggravated by religious prejudice. In line with the position in relation to common law aggravations, evidence from a single source is sufficient to prove the aggravation, i.e. corroboration is not required.