



Criminal Justice (Scotland) Act 2003

2003 asp 7

PART 12

MISCELLANEOUS AND GENERAL

Miscellaneous

74 Offences aggravated by religious prejudice

- (1) This section applies where it is—
- (a) libelled in an indictment; or
 - (b) specified in a complaint,
- and, in either case, proved that an offence has been aggravated by religious prejudice.
- (2) For the purposes of this section, an offence is aggravated by religious prejudice 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 based on the victim's membership (or presumed membership) of a religious group, or of a social or cultural group with a perceived religious affiliation; or
 - (b) the offence is motivated (wholly or partly) by malice and ill-will towards members of a religious group, or of a social or cultural group with a perceived religious affiliation, based on their membership of that group.

[^{F1}(2A) It is immaterial whether or not the offender's malice and ill-will is also based (to any extent) on any other factor.]

(3) ^{F2}.....

(4) ^{F2}.....

[^{F3}(4A) The court must—

- (a) state on conviction that the offence was aggravated by religious prejudice,
- (b) record the conviction in a way that shows that the offence was so aggravated,
- (c) take the aggravation into account in determining the appropriate sentence, and
- (d) state—

Changes to legislation: Criminal Justice (Scotland) Act 2003, Section 74 is up to date with all changes known to be in force on or before 21 March 2024. 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

- (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
 - (ii) otherwise, the reasons for there being no such difference.]
- (5) For the purposes of this section, evidence from a single source is sufficient to prove that an offence is aggravated by religious prejudice.
- (6) In subsection (2)(a)—
- “membership” in relation to a group includes association with members of that group; and
 - “presumed” means presumed by the offender.
- (7) In this section, “religious group” means a group of persons defined by reference to their—
- (a) religious belief or lack of religious belief;
 - (b) membership of or adherence to a church or religious organisation;
 - (c) support for the culture and traditions of a church or religious organisation; or
 - (d) participation in activities associated with such a culture or such traditions.

Textual Amendments

- F1** S. 74(2A) inserted (13.12.2010) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), ss. **25(2)(a)**, 206; S.S.I. 2010/413, **art. 2**, Sch.
- F2** S. 74(3)(4) repealed (13.12.2010) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), ss. **25(2)(b)**, 206; S.S.I. 2010/413, **art. 2**, Sch.
- F3** S. 74(4A) inserted (13.12.2010) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), ss. **25(2)(c)**, 206; S.S.I. 2010/413, **art. 2**, Sch.

Changes to legislation:

Criminal Justice (Scotland) Act 2003, Section 74 is up to date with all changes known to be in force on or before 21 March 2024. 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.

[View outstanding changes](#)

Changes and effects yet to be applied to :

- s. 74 repealed by [2021 asp 14 Sch. 2 para. 4](#)
- specified provision(s) and purposes Appointed Day(s) by [S.S.I. 2003/439 art. 23Sch.](#) (Effect not applied to [legislation.gov.uk](#). This S.S.I. is revoked (1.10.2003) by S.S.I. 2003/475, art. 4)

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

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

- s. 16D inserted by [2023 asp 4 s. 14\(3\)](#)
- s. 16ZA inserted by [2023 asp 4 s. 14\(2\)](#)
- s. 17E(6) inserted by [2023 asp 4 s. 14\(7\)\(d\)](#)
- s. 17DA inserted by [2023 asp 4 s. 14\(6\)](#)
- s. 17ZA inserted by [2023 asp 4 s. 14\(4\)](#)
- s. 18A(5) inserted by [2023 asp 4 s. 14\(8\)\(b\)](#)