



Offences (Aggravation by Prejudice) (Scotland) Act 2009

2009 asp 8

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
 - (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.

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
 - (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 sexual orientation is reference to sexual orientation towards persons of the same sex or of the opposite sex or towards both.
- (8) In this section, reference to transgender identity is reference to—
- (a) transvestism, transsexualism, intersexuality or having, by virtue of the Gender Recognition Act 2004 (c. 7), changed gender, or
 - (b) any other gender identity that is not standard male or female gender identity.

3 Commencement and short title

- (1) This Act (except this section) comes into force on the day that the Scottish Ministers by order made by statutory instrument appoint.
- (2) An order under subsection (1) may include transitional or saving provision.
- (3) The short title of this Act is the Offences (Aggravation by Prejudice) (Scotland) Act 2009.