

*These notes relate to the Offences (Aggravation by Prejudice)
(Scotland) Act 2009 (asp 8) which received Royal Assent on 8 July 2009*

OFFENCES (AGGRAVATION BY PREJUDICE) (SCOTLAND) ACT 2009

EXPLANATORY NOTES

THE ACT

3. This Act makes provision for the prejudicial context (i.e. either the motivation or the demonstration of malice or ill will) of an offence to be taken into consideration when an offender is sentenced when that prejudicial context has been one of hatred towards persons within certain groups.
4. The Act provides for new statutory aggravations which may be applied in cases where there is evidence that a crime has been motivated by malice and ill-will based on the victim's actual or presumed sexual orientation, transgender identity or disability. The aggravations also cover situations where an offender demonstrates malice and ill-will towards a relevant societal group as a whole, without the need for an individual victim to be identified. Further explanation on the two types of situation where the aggravations apply is contained in the commentary on sections below.
5. Where aggravations are proven, the court must take that motivation into account when determining sentence. However, the ultimate discretion of the court to impose a sentence is not affected. In some cases this may well lead to a different sentence (e.g. a longer period of custody, a higher fine or an appropriate community disposal) than might have been the case if the offence was not so aggravated. In other cases, an aggravating factor may not have any bearing on sentence. Similar statutory aggravations already exist to protect individuals targeted on racial or religious grounds. Statutory aggravations relating to crimes motivated by prejudice based on disability and sexual orientation are already in place in England and Wales and Northern Ireland.