

# **OFFENCES (AGGRAVATION BY PREJUDICE) (SCOTLAND) ACT 2009**

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### *Overview*

#### *Section 1: Prejudice relating to disability*

7. This section applies where it has been specified that an offence was motivated by prejudice relating to disability and it has been proven that the offence was motivated by that prejudice.
8. Subsection (2) sets out when an offence is aggravated by prejudice relating to disability. There are two types of situation where it can arise. First, where the offender has demonstrated prejudice towards to the victim based on their actual or presumed disability and secondly, where the offence was motivated by general malice and ill-will towards people who have a disability or particular disability. This means that the aggravation can be applied even in cases where the malice or ill-will is expressed towards a wider group as a whole, without the need for a specific or individual victim to have been identified – for example, where a building used by disability organisations is vandalised or daubed with graffiti that suggests prejudice against those with a disability. The prejudice may have been demonstrated before, during or after the offence was committed.
9. Subsections (3) and (4) are evidential provisions. Subsection (3) confirms that the aggravation can apply even if prejudice relating to disability is not the sole motivation for the crime and subsection (4) provides that corroboration is not required to prove that a crime was aggravated by prejudice relating to disability.
10. Subsection (5) requires that, where an aggravation relating to prejudice is proved, the Court must take that aggravation into account when determining sentence. It must also explain how the aggravation has affected the sentence (if at all) and record the conviction in a manner which shows that the offence was aggravated by prejudice related to disability.
11. Subsections (7) and (8) define what is meant by disability in the Act. Disability is defined widely by reference to physical and mental impairments (which is a recognised way of defining disability). It includes learning difficulties, mental illness, physical disabilities and sensory impairments. Subsection (8) ensures that the definition also expressly includes any medical condition which has or may have in the future a substantial or long term effect or is progressive – examples of such conditions include HIV/AIDS, Hepatitis C, cancer and multiple sclerosis.