



Offences (Aggravation by Prejudice) (Scotland) Act 2009

2009 asp 8

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—

Changes to legislation: *Offences (Aggravation by Prejudice) (Scotland) Act 2009, Section 2 is up to date with all changes known to be in force on or before 29 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.
- (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.

Commencement Information

II [S. 2](#) in force at 24.3.2010 by [S.S.I. 2010/115](#), [art. 2](#)

Changes to legislation:

Offences (Aggravation by Prejudice) (Scotland) Act 2009, Section 2 is up to date with all changes known to be in force on or before 29 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 the whole Act associated Parts and Chapters:

- Act repealed by [2021 asp 14 Sch. 2 para. 5](#)