

# **CRIMINAL JUSTICE AND LICENSING (SCOTLAND) ACT 2010**

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### **Part 1 - Sentencing**

##### ***Section 25 - Offences aggravated by racial or religious prejudice***

122. Section 96 of the Crime and Disorder Act 1998 (“the 1998 Act”) created a statutory aggravation relating to race requiring that the court shall, on convicting a person of an offence, take the aggravation into account in determining the appropriate sentence.
123. In a similar vein, section 74 of the Criminal Justice (Scotland) Act 2003 (“the 2003 Act”) created a statutory aggravation relating to religion requiring that the court shall, on convicting a person of an offence, take the aggravation into account in determining the appropriate sentence.
124. This section amends both the 1998 Act and the 2003 Act to require that the courts record how an aggravation has affected a sentence (if at all) and to ensure consistency between the statutory provisions.
125. Subsection (1) substitutes subsection (5) of section 96 of the 1998 Act. This requires that, where an aggravation relating to prejudice is proved, the court must also explain how the aggravation has affected the sentence (if at all – and if not, then the reasons for this) and record the conviction in a manner which shows that the offence was aggravated by prejudice related to race.
126. Subsection (2)(a) inserts a new subsection (2A) into section 74 of the 2003 Act. This provides that the aggravation can apply even if prejudice relating to religion is not the sole motivation for the offence. This is already the case for racial aggravations and therefore ensures consistency between the two provisions.
127. Subsection (2)(b) replaces subsections (3) and (4) of section 74 of the 2003 Act with subsection (4A), which requires that, where an aggravation relating to prejudice is proved, the court must explain how the aggravation has affected the sentence (if at all – and if not, then the reasons for this) and record the conviction in a manner which shows that the offence was aggravated by prejudice related to religion.