



Hate Crime and Public Order (Scotland) Act 2021

2021 asp 14

PART 1

AGGRAVATION OF OFFENCES BY PREJUDICE

1 Aggravation of offences by prejudice

- (1) An offence is aggravated by prejudice if—
 - (a) where there is a specific victim of the offence—
 - (i) at the time of committing the offence, or immediately before or after doing so, the offender demonstrates malice and ill-will towards the victim, and
 - (ii) the malice and ill-will is based on the victim's membership or presumed membership of a group defined by reference to a characteristic mentioned in subsection (2), or
 - (b) whether or not there is a specific victim of the offence, the offence is motivated (wholly or partly) by malice and ill-will towards a group of persons based on the group being defined by reference to a characteristic mentioned in subsection (2).
- (2) The characteristics are—
 - (a) age,
 - (b) disability,
 - (c) race, colour, nationality (including citizenship), or ethnic or national origins,
 - (d) religion or, in the case of a social or cultural group, perceived religious affiliation,
 - (e) sexual orientation,
 - (f) transgender identity,
 - (g) variations in sex characteristics.
- (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.
- (5) In this section—
 - “membership”, in relation to a group, includes association with members of that group,
 - “presumed” means presumed by the offender.

2 Consequences of aggravation by prejudice

- (1) Subsection (2) applies where it is—
 - (a) libelled in an indictment, or specified in a complaint, that an offence is aggravated by prejudice, and
 - (b) proved that the offence is so aggravated.
- (2) The court must—
 - (a) state on conviction—
 - (i) that the offence is aggravated by prejudice, and
 - (ii) the type of prejudice by which the offence is aggravated (by reference to one or more of the characteristics mentioned in section 1(2)),
 - (b) record the conviction in a way that shows—
 - (i) that the offence is aggravated by prejudice, and
 - (ii) the type of prejudice by which the offence is aggravated (by reference to one or more of the characteristics mentioned in section 1(2)),
 - (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.