



**EXTENSION OF UNDULY LENIENT SENTENCING PROVISIONS TO FRAUDULENT EXCISE EVASION FOR  
FUEL AND TOBACCO**

DEPARTMENT OF JUSTICE CONSULTATION

Ulster Unionist Party Response

1. Introduction

There is a clear need for change as evidenced within the consultation paper produced by the Department of Justice (DoJ) and we therefore welcome this public consultation and the opportunity to put forward our views on the matter.

The Ulster Unionist Party has consistently raised concerns over unduly lenient sentencing in relation to fuel and tobacco criminality<sup>1</sup> and we believe that the time for positive action and progress is long overdue.

Despite the on-going difficulties still to be addressed, we would commend the various agencies involved, including the Police Service of Northern Ireland (PSNI), for their continued work in locating and dismantling a number of large scale operations and we support them in carrying out their role in tackling fuel and tobacco fraud.

2. Reasons for action

It is our view that action is necessary to deal with excise evasion for fuel and tobacco for a number of reasons:

- i) Northern Ireland is particularly susceptible to this type of crime given the land border with the Republic of Ireland as criminals seek to exploit the differential in duty rates.

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<sup>1</sup> E.g. <http://uup.org/news/1507/Kennedy-demands-action-to-jail-criminals-responsible-for-fuel-smuggling-and-laundering>

ii) There is increasing evidence that this type of criminality is being used to fund the nefarious activities of paramilitary groupings, particularly republican paramilitary groupings with the OCTF stating that ‘some dissident republicans are generating significant sums of money from fuel laundering and tobacco smuggling.’<sup>2</sup>

iii) Estimations by Her Majesty’s Revenue and Customs regarding the amount of uncollected revenue from non-payment of relevant duties are rising leading to conclusions that the problem is worsening.

iv) During continuing economically challenging times law abiding businesses are losing out resulting in their prices being pushed up with consumers negatively affected. At worst some businesses are facing the threat of closure.<sup>3</sup>

v) Increasing levels of sophistication in terms of how operations are taking place, particularly fuel plants, require new and updated approaches.

vi) There is clear evidence of a disparity in the number of custodial sentences given in Northern Ireland for these crimes in comparison with those given in England and Wales as shown in Annex B of the public consultation. A senior customs officer also recently confirmed that no one had gone to jail for over a decade for fuel smuggling in Northern Ireland.<sup>4</sup>

### 3. Option three

The Ulster Unionist Party are content that option three, as outlined in the DoJ consultation paper, is the correct approach to take at this time.

Option three would have the effect of adding hydrocarbon fuels and tobacco to the Criminal Justice Act 1988 (Reviews of Sentencing) Order 2006. This would allow the Director of Public Prosecutions the discretion to refer any case relating to these types of offences, where he considers an unduly lenient sentence has been handed down, to the Court of Appeal. This additional mechanism for appeal for such cases would be a positive step.

Option one, whilst recognising that the work taken forward by the Lord Chief Justice needs time to bed in, does not go far enough and is therefore not acceptable.

We also consider that option two is not a sufficient response given the severity of the situation extends to both fuel and tobacco. We support the DoJ position on this.

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<sup>2</sup> Organised Crime Task Force (OCTF) Annual Report and Threat Assessment 2013 (Page 27)

<sup>3</sup> Annual survey by the Tobacco Retailers Alliance (TRA)

<sup>4</sup> <http://www.bbc.co.uk/news/uk-northern-ireland-21272152>

#### 4. Additional comments

Further to the action set out in option three the Ulster Unionist Party would also make the following additional comments as part of our response:

i) We recognise and welcome the work carried out by the Lord Chief Justice as part of his Sentencing Group which has resulted in the publication of new guidelines for the Court of Appeal and a new compendium for the judiciary on duty evasion. It is now essential that the outworking's of these changes are monitored effectively.

ii) The NI Affairs Select Committee conducted an inquiry which expressed disappointment at the slow progress in implementing a 'single tender procedure for a marker for rebated diesel'. We believe, as set out in the Governments response<sup>5</sup>, that improvements in marker technology remain an essential component in tackling fuel fraud.

iii) Fuel fraud does serious damage to the environment and in that respect requires a cross departmental approach. The Environment Minister must also set out how he is using his powers to mitigate the environment impact.

iv) It is without doubt that the situation which currently pertains regarding the National Crime Agency (NCA) will be detrimental to the PSNI as they investigate crime relating to fuel and tobacco given it is often cross border in nature. We will continue to press the case for the NCA to be fully operational in Northern Ireland to ensure that more prosecutions are brought against those who carry out these types of crime.

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<sup>5</sup> Fuel Laundering and Smuggling in Northern Ireland: Government Response to the Committee's Third Report of Session 2010-12 (published on 25 June 2012)